RECEIVED
JUL 2 6 1982
Office of the CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1982
No. _____

ZOILA ALFONSO,

Appellant,

vs.

BOARD OF REVIEW,
DEPARTMENT OF LABOR AND INDUSTRY,
STATE OF NEW JERSEY,

Appellee.

ON APPEAL FROM
THE SUPREME COURT OF NEW JERSEY

JURISDICTIONAL STATEMENT

COUNSEL FOR APPELLANT:

BERNARD K. FREAMON, ESQ.
SETON HALL LAW SCHOOL
ESSEX-NEWARK LEGAL SERVICES
1095 Raymond Boulevard
Newark, New Jersey 07102
(201) 642-8701

JOSE E. PARDO, II, ESQ.
41 64th Street
West New York, New Jersey 07093
(201) 868-4334

HARRIS DAVID, ACTING EXECUTIVE DIRECTOR
ESSEX-NEWARK LEGAL SERVICES
18 Rector Street
Newark, New Jersey 07102
(201) 624-4500

QUESTIONS PRESENTED

1. Whether a state statute requiring delivery of a written notice of determination on a claim for unemployment compensation violates the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States when applied to a claimant who is unable to speak or read English under circumstances where the state has created a bilingual notice to be distributed to said claimants and has failed to provide the same to the Appellant.

2. Does the State of New Jersey's refusal to provide bilingual notice to Spanish speaking claimants in unemployment compensation cases, where such notices have been created, violate 42 U.S.C. §2000d and regulations promulgated thereunder?

TABLE OF CONTENTS

		Page
I	QUESTIONS PRESENTED	1
II	TABLE OF CONTENTS	2
III	TABLE OF AUTHORITIES	3
IV	OPINIONS BELOW	3
V	JURISDICTION	4
VI	CONSTITUTIONAL PROVISION, STATE STATUTE AND FEDERAL REGULATIONS INVOLVED	5
VII	STATEMENT OF THE CASE	7
VIII	THE QUESTION IS SUBSTANTIAL	10
IX	CONCLUSION	14
X	APPENDIX	1A

TABLE OF AUTHORITIES

Cases	Page
Dalomba v. Director of the Division of Employment Sec., 337 N.E. 2d 687 (Mass. 1975)	12
Grannis v. Ordean, 234 U.S. 385 (1914)	10
Hernandez v. Dept. of Labor, 83 Ill. 2d 512, 416 N.E. 2d 263 (Ill. 1981)	12
Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950)	9,10,11

Other Authority

U.S. Department of Commerce, Bureau of the Census, 1970 Census of Population and Housing, Final Population and Housing Counts (1971), and 1980 Census of Population and Housing, Final Population and Housing Counts (1981) and 1980 Census of Population and Housing, Preliminary Reports (1980) where final counts have not yet been published.....	10,13

OPINIONS BELOW

The opinion of the New Jersey Supreme Court entered April 26, 1982 and the opinion of the New Jersey Superior Court, Appellate Division, are set out in the Appendix hereto.

The opinion of the New Jersey Supreme Court is reported at 89, N.J. 41, 444 A2d 1075 (1982). The opinion of the New Jersey Superior Court, Appellate Division, is reported at 176 N.J. Super. 493, 423 A2d 1006 (1980). The order of the Board of Review dated November 8, 1979 is not reported. It is reprinted in the Appendix hereto See, p. 37-A infra.

JURISDICTION

This appeal from a decision of the New Jersey Supreme Court, affirming the denial of unemployment compensation, questions the validity of N.J.S.A. 43:21-6(b)(1) as applied in this case on the ground that it denies the Appellant her right of procedural due process guaranteed by the Fourteenth Amendment of the Constitution of the United States.

The judgment of the Supreme Court of New Jersey was entered on April 26, 1982. Notice of Appeal to this Court was duly filed in the Supreme Court of New Jersey on July 26, 1982.

This appeal is being docketed in this Court within 90 days from the date of entry of the judgment below. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(2).

CONSTITUTIONAL PROVISION STATUTES AND FEDERAL REGULATIONS INVOLVED

Fourteenth Amendment, Section 1, United States Constitution:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. §2000d:

> No person in the United States shall, on the ground of race, color, or natural origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

N.J.S.A. 43:21-6(b)(1) [In pertinent part]:

> The deputy shall promptly make an initial determination based upon the available information. The initial determination shall show the weekly benefit amount payable, the maximum duration of benefits with respect to the employer to whom the determination relates, and also shall show whether the claimant is ineligible or disqualified for benefits under the initial determination. The claimant and the employer whose account may be charged for benefits payable pursuant to said determination shall be promptly notified thereof.
>
> Unless the claimant or any interested party within 7 calendar days after delivery of notification of an initial determination or within 10 calendar days after such notification was mailed to his or their last-known address and addresses, files an appeal from such decision, such decision shall be final...

[The statute is reprinted in its entirety in the Appendix at pp. 42-A and 43-A, infra.]

29 C.F.R. 31.3:

(b) Specific discriminatory actions prohibited. (1) A recipient under any program to which this regulation applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the programs;

(6)(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program shall take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color or national origin.

STATEMENT OF THE CASE

The Appellant was employed by Korvettes, Inc. for over six years as a garment labeler at their store in Bayonne, New Jersey. When her employment ceased on September 7, 1979, she sought unemployment compensation from the Appellee by filing a claim at the South Newark (N.J.) Claims Office.

On September 25, 1979, Appellant was personally served with a Notice of Determination at the claims office denying her claim on the grounds that she had left work voluntarily. The Notice of Determination was written solely in English. The worker who provided her with the written notice spoke only English.

Appellant, who neither speaks nor reads English, had no knowledge of the content of the determination. She therefore sought to have it translated. On October 5, 1979 she succeeded in having the Notice of Determination translated by a local community agency. Immediately thereupon, with the aid of the agency, Appellant filed a Notice of Appeal from denial of benefits. This occurred ten (10) days Appellant had received the Notice of Determination.

On October 17, 1979 the Appeal Tribunal dismissed the appeal because the notice had not been filed within seven (7) days after its service upon the Appellant, as required by N.J.S.A. 43:21-6(b)(1).

Appellant next appealed to the Board of Review, requesting a reversal of the Appeal Tribunal's order of dismissal and a hearing on the merits of her claim. It was at this point that Appellant first obtained counsel.

It was also the first time the Federal Constitutional question was raised.

The Board of Review dismissed Appellant's appeal and she timely filed and perfected an appeal to the Superior Court of New Jersey, Appellate Division.

On December 2, 1980, in a per curiam opinion, the Appellate Court affirmed the decision of the Board of Review. In doing so, it rejected the argument that:

> "...notice cannot be imputed to a claimant for the purpose of the statutory time period unless that person has been served with a notice written in a language which the person so served can read or in the alternative, unless the Division causes the notice to be read to the claimant in a language which the claimant understands." (See, p.36-A, infra)

The Court found no violation of the Federal Constitution or the Civil Rights Act. Furthermore, the Court indicated that the conduct did not offend its "sense of fair play". Id.

Appellant docketed a Notice of Appeal in the Supreme Court of New Jersey on December 29, 1980. It was at this time that Appellant's attorney became aware that bilingual forms had been created by the State; one of which was a bilingual Notice of Determination. These forms were in the possession of the New Jersey Department of Labor and Industry, but had not been distributed to the Appellant.

On February 20, 1981 a motion to supplement the appellate record with copies of the aforementioned forms and a request for an interlocutory injunction demanding that the State distribute such forms forthwith was denied. The forms were later made part of the record through an admission of counsel at oral argument and a copy of the

form notice of determination can be found within. See, p.44-A

On April 26, 1982 the New Jersey Supreme Court affirmed the Appellate Division holding, finding that even under circumstances where the State Department of Labor and Industry has developed a bilingual version of the Notice of Determination; "...for use in the cases of claimants who speak and understand Spanish and are deficient in English language skills" the notice given to the Appellant satisfies the requirements of due process and does not violate the Civil Rights Act of 1964. See, pp. 1-A thru 10-A, infra.

The dissenting opinion of Chief Justice Wilentz (joined by Justice Pashman) challenges the majority opinion by finding that the State failed to show, under Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306 (1950), that it would be unreasonable to require notice in the claimant's language in cases where simple notice of the right to appeal and time limit for action is all that is needed, thereby denying Appellant due process of law. See, 11-A thru 24-A, infra. The dissent also pointed to many other circumstances where the State has been routinely giving bilingual notice to claimants. See, p. 28-A n.12, infra.

Notice of Appeal to this Court was duly filed in the Supreme Court of New Jersey on July 26, 1982.

THE QUESTION IS SUBSTANTIAL

The issue presented by this appeal, whether a state may deny a Hispanic citizen her Fourteenth Amendment right of procedural due process solely because she does not speak English, affects a sizeable and rapidly increasing percentage of the nation's population.[1]

The importance of securing the right to receive a notice in conformity with the criteria set down by this Court in Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306 (1950) is inseparable from what this Court has described as the fundamental requisite to due process: the opportunity to be heard. Grannis v. Ordean, 234 U.S. 385, 394 (1914).

The risk incurred when non-English speaking Hispanic citizens are alienated from the judicial process is most alarming in a constitutional democracy. Although persons of Mexican and Cuban ancestry represent a significant portion of the nation's Hispanic population[2], the alienation is most egregious when Puerto Ricans are involved[3]. Puerto Ricans are all native born American citizens. The residents of Puerto Rico, however, speak primarily in Spanish. The local Courts in Puerto Rico

---

[1]In 1970 there were 9,062,602 Hispanics in the United States representing 4.5% of the general population. In 1980 there were 14,605,000 Hispanics in the United States representing 6.4% of the general population.
U.S. Department of Commerce, Bureau of the Census, 1970 Census of Population and Housing, Final Population and Housing Counts (1971), and 1980 Census of Population and Housing, Final Population and Housing Counts (1981) and 1980 Census of Population and Housing, Preliminary Reports, (1980) where final counts have not yet been published.

[2]Persons of Mexican origin comprise 60.6% of the Hispanic population while those of Cuban origin represent 6.6% of the Hispanic population. Id.

[3]Puerto Ricans comprise 14.5% of the nation's Hispanic population. Id.

conduct their business in Spanish. Should a Puerto Rican, having spoken Spanish all his life, travel to New Jersey, procure a job, pay unemployment insurance premiums, and suffer a dismissal because of some downturn in business; he would be unable to meaningfully present a claim for benefits to the New Jersey Departmentof Labor and Industry, Unemployment Claims Division.

He would not be apprised of the outcome of his claim. He would not understand his right to appeal an adverse determination. He would not know that a hearing on his claim must be scheduled upon his demand, and most significantly, he would have no idea of the time span wihtin which he needed to act. He may well know that the subject treated in the written English notice delivered to him must be investigated urgently, but cognizance of urgency is not synonymous with knowledge of an exact time limitation.

Does the Constitution permit a procedure of this sort, or must some correction be made to align the right with the needs of the recipient? The dissenting opinion in the Court below clearly articulates the reasons why a change in the procedure should be accomplished.

Chief Justice Wilentz stated:

> This result is clearly mandated by the due process guarantees of the Fourteenth Amendment of the United States Constitution. The majority cites Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 865 (1950), to reach a contrary result. But in fact, Mullane, provides the strongest support for the conclusion that Zoila Alfonso was not given notice of her right to appeal.

In the case at bar, the claimant diligently investigated her rights without assistance from the State apparatus. Appellant not only pursued her quest for a translation, but unlike other claimants who relied on translations by friends to their detriment[4], sought out a community agency to assist her. The translation came three days too late.

New Jersey has recognized the fact that some correction must be made and it has created bilingual forms to that end. Furthermore, at oral argument in the Court below, the State's attorney admitted that New Jersey faced no administrative burden in implementing use of the forms. In spite of this fact, the forms have not been distributed for use.

No prior case brought before this Court, on any aspect of bilingualism, has ever revealed such blatant governmental disregard for the rights of its citizens. The State's failure to implement the most effective tool to remedy this problem, a bilingual form, serves no state interest whatsoever while denying United States citizens meaningful access to the judicial process.

The majority below hints that minimal official use of a language other than English, even if in limited form for the purpose of safeguarding so precious a right as the right to due process, will somehow injure the character and infringe upon the sovereignty of the State. See, p. 8-A infra. In disallowing such use, the Court below acquiesces to the conduct of a State apparatus which holds the remedy, temptingly, in its hand.

---

[4]See, Dalomba v. Director of the Division of Employment, Sec., 337 N.E. 2d 687 (Mass. 1975) and Hernandez v. Dept. of Labor, 83 Ill. 2d 512, 416 N.E. 2d 263 (Ill. 1981).

Demographics show that five states have a Hispanic population of greater than ten percent.[5] Four other states, including New Jersey, report that between five to ten percent of their residents are Hispanic.[6] From all indications these totals will continue to increase throughout the decade. Hispanics as a group will undoubtedly be encouraged, because of the allowance for individual potential which the United States Constitution protects, to contribute to the nation's prosperity. To carelessly deprive those lacking sufficient comprehension of the English language of their constitutional right to due process of law will seriously undermine the principles of justice, equality, and fundamental fairness for all.

---

[5]New Mexico (36.6%), Texas (21%), California (19.2%), Arizona and Colorado (11.7%) make up this group. 1980 Census of Population and Housing, Final Population and Housing Counts (1981) See Note 1 supra.

[6]New York (9.5%), Florida (8.8%), New Jersey (6.68%) and Illinois (5.6%) make up this group. Id.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

BERNARD R. FREAMON, ESQ.
SETON HALL LAW SCHOOL
ESSEX-NEWARK LEGAL SERVICES
1095 Raymond Boulevard
Newark, New Jersey 07102
(201) 642-8701

JOSE E. PARDO, II., ESQ.
41 64th Street
West New York, New Jersey 07093
(201) 868-4334

HARRIS DAVID, ESQ.
ACTING EXECUTIVE DIRECTOR
ESSEX-NEWARK LEGAL SERVICES
18 Rector Street
Newark, New Jersey 07102
(201) 624-4500

DATED: July 24, 1982.

INDEX TO APPENDIX

	Page
OPINION OF SUPREME COURT OF NEW JERSEY.....	1-A
OPINION OF THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION.....	35-A
ORDER OF BOARD OF REVIEW AFFIRMING ORDER OF DISMISSAL	37-A
ORDER OF DISMISSAL OF APPEAL TRIBUNAL	38-A
NOTICE OF DETERMINATION	39-A
JUDGMENT SHEET, NEW JERSEY SUPREME COURT	40-A
NOTICE OF APPEAL	41-A
TEXT OF STATE STATUTORY PROVISION.....	42-A
BILINGUAL NOTICE OF DETERMINATION FORM	44-A

ZOILA ALFONSO,

Appellant,

v.

BOARD OF REVIEW,
DEPARTMENT OF LABOR
AND INDUSTRY, STATE
OF NEW JERSEY,

Respondent.

Argued October 19, 1981 -- Decided April 26, 1982

On appeal from the Appellate Division,
Superior Court, whose opinion is reported
at 176 N.J. Super. 493 (1980).

Jose E. Pardo, II, argued the cause for
appellant (Patricia A. Thornton, Executive
Director, Essex-Newark Legal Services,
attorney).

Michael S. Bokar, Deputy Attorney General,
argued the cause for respondent (James R.
Zazzali, Attorney General of New Jersey,
attorney).

The opinion of the Court was delivered by

CLIFFORD, J.

On September 7, 1979 appellant, Zoila Alfonso (Alfonso), filed a claim for unemployment insurance benefits with the South Newark Claims Office of the Division of Employment Security, Department of Labor and Industry (Division). On

September 25, 1979, while at the South Newark office, she was personally served with a "Notice of Determination," which stated that her claim was being denied because she had left work voluntarily. The notice, written entirely in English, also informed her that she had seven days in which to file an appeal of the determination. Alfonso neither reads nor speaks English.

For reasons not explained in the record, Alfonso did not have the document translated until October 5, 1977, ten days after she had received it.[1] On that day, with the aid of

---

[1]On the basis of certain documents in its file the Board disputes this assertion. A Record of Claim Interview form shows that the September 25 determination was preceded that day by a claim interview. Alfonso's comments, as summarized by the examiner, appear on the form. Immediately following Alfonso's signature on the front of the form are the words "Interpreter: Donna Perez." After the interview Alfonso received a Notice of Determination form, indicating that she was disqualified for benefits. At the bottom of the form immediately preceding notice of the time to appeal are the words "Right of Appeal," circled in pen, apparently by the examiner.

The Board asks us to assume from this information that an interpreter assisted Alfonso at the claim interview and explained the time limitations to her. Although that conclusion is not unreasonable, it is not the exclusive one, particularly in view of the Board's concession that no one can testify that an interpretation was in fact

the local community group that had translated the notice, she filed with the Division an appeal of the determination. On October 17, 1979, the Division's appeal tribunal entered an order dismissing the appeal because it had not been filed within the seven day period required by N.J.S.A. 43:21-6(b)(1). This order was subsequently affirmed by the Division's Board of Review (Board).

In her appeal of that affirmance before the Appellate Division, Alfonso argued that both the due process clause of the Fourteenth Amendment and Section 601 of the Civil Rights Act of 1964, 42 U.S.C. §2000(d), require that the notice of determination, including the notice of time in which to appeal, be given to claimants in a language that they can understand -- in this case Spanish. The Appellate Division rejected these arguments and affirmed the decision of the Board. Alfonso v. Board of Review, Department of Labor and Industry, 176 N.J.Super. 492 (1980). The matter

---

furnished. In any event we need not decide the point given our determination on the constitutional issue.

is now before us for review because of the substantial constitutional question involved. R. 2:2-1.

Appellant's principal argument addresses the nature and extent of notice that is required under traditional notions of due process. In an oft-quoted passage, the United States Supreme Court has articulated the fundamental nature of the notice requirements:

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. * * * But if with due regard for the practicalities and peculiarities of the case these conditions are reaonably met, the constitutional requirements are satisfied. "The criterion is not the possibility of conveivable injury but the just and reasonable character of the requirements, having reference to the subject with which the statute deals."
>
> [Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314-15, 94 L.Ed. 873-74 (1950) (citations omitted).]

These general principles form the proper analytical basis for our inquiry. The paramount question thus is whether the notice given to the claimant here was calculated "under all the circumstances" to convey the required information. The answer depends on an appraisal of the circumstances.

Appellant argues not that the notice was unclear per se, but rather that it was unclear to her solely because she is not literate in English. She alleges, and the Board does not dispute, that the agents of the Division who handed her the determination knew that she did not speak or read English. Under such circumstances, she maintains, the State was required by the due process considerations outlined by Mullane, supra, and echoed in the New Jersey cases, O'Connor v. Abraham Altus, 67 N.J. 106, 126 (1975); Feuchtbaum v. Constantini, 59 N.J. 167, 175 (1971), either to translate the notice for her or to give her a written translation. Logically extended, this argument leads to a requirement that when the State is obliged to give notice, it must

provide such notice in a language comprehensible to the recipient, at least where the State is aware that the recipient is not fluent in English.

The highest courts in at least three states have rejected this argument. In two of those instances the courts were faced with situations nearly identical to those in this case.

In DaLomba v. Director of the Division of Employment Sec., ___ Mass. ___, 337 N.E.2d 687 (Mass.1975), the Supreme Judicial Court of Massachusetts held that an unemployment claimant's right to procedural due process was not violated when she was sent a notice written entirely in English, even though she was not fluent in English. The court said:

> We do not believe that a notice in English, clear on its face, is insufficient under the statute merely because, as to persons under a language disability, it may not actually inform. English is the official language of this country and of this Commonwealth. Official communications in the English language are

reasonable and are sufficient to constitute effective notice.

[Id. at ___, 337 N.E.2d at 689, (footnote and citations omitted).]

Because the notice in English was adequate, the court upheld the denial of the request for review that was not filed within the statutory time limit.

The same result was reached, under similar circumstances, in Hernandez v. Department of Labor, 83 Ill.2d 512, 416 N.E.2d 263 (Ill.1981). The case involved the denial of unemployment benefits. The Supreme Court of Illinois rejected the argument that due process required that an out-of-time appeal be allowed where the reason for the tardiness was the claimant's inability to comprehend a notice written entirely in English. Likewise, the Supreme Court of California has held that the State was not required to issue welfare reduction notices in Spanish to those who the State knew were literate in Spanish but not in English. Guerrero v. Carleson, 9 Cal.3d 808, 109 Cal.Rptr. 201, 512 P.2d 833,

cert. den., 414 U.S. 1137, 38 L.Ed.2d 762 (1974), relying in part on Castro v. State, 2 Cal.3d 223, 85 Cal.Rptr. 20, 466 P.2d 244 (1970), wherein the court, emphasizing the substantial state interest in maintaining a single language system made it clear that there was no constitutional requirement that California adopt a bilingual electoral apparatus. See also Kuri v. Edelman, 491 F.2d 684 (7th Cir.1974); Nuez v. Diaz, 421 N.Y.S.2d 770 (Sup.Ct.1979). The theory that unites all of these holdings is not complex. The courts have recognized, whether explicitly or implicitly, that in an English-speaking country, requirements of "reasonable notice" are satisfied when the notice is given in English.

These holdings are not born of any lack of appreciation for the difficulties that non-English speaking people encounter in our society. Those difficulties are many and burdensome. It is doubtless true, especially in areas where there is a high density of non-English speaking population, that administrative and humanitarian considerations would warrant the use of bilingual documents. The Board readily acknowledges as much. Indeed, as we were informed at oral

argument, the Division has developed a Spanish language explanatory sheet for the Notice of Determination, for use in the cases of claimants who speak and understand Spanish and are deficient in English language skills.[2] But these salutary considerations by no means translate into a requirement, under procedural due process concepts, that the State adopt a policy mandating the use of such documents. The decision to provide translation, encompassing as it does the determination of when a translation should be provided, and to whom, and in what language, is one that is best left to those branches of government that can better assess the changing needs and demands of both the non-English speaking population and the government agencies that provide the translation.

Under the circumstances the notice given to the appellant satisifed the requirements of due process. In so holding, we number ourselves among those other courts, cited above, that have expressed the view that although

---

[2]Although the bi-lingual form has been distributed since 1978, there is no evidence in the record that it was in fact used in Alfonso's case and the Board concedes it could not

bilingual or multilingual notices may in some instances be desirable, their use is not constitutionally required.

In addition to the due process argument, Alfonso also alleges that the Division's failure to provide bilingual notice violates the Civil Rights Act of 1964, 42 U.S.C. §2000(d). The contention is without merit.

Affirmed.

Justices Schreiber, Handler, Pollock and O'Hern join in this opinion. Chief Justice Wilentz filed a separate dissenting opinion in which Justice Pashman joins.

---

produce such evidence even were there to be a remand.

ZOILA ALFONSO,

Appellant,

v.

BOARD OF REVIEW, DEPARTMENT OF LABOR AND INDUSTRY, STATE OF NEW JERSEY,

Respondent.

WILENTZ, C.J., dissenting.

On September 25, 1979, Zoila Alfonso was handed a Notice of Determination, a printed form, entirely in English. She does not understand English. The staff of the South Newark claims office apparently knew that she spoke only Spanish. Zoila Alfonso was required to respond to this notice by filing an appeal within seven days, the same amount of time available to English-speaking applicants. There is no reason to presume that she understood that this printed piece of paper required her to take action, let alone immediate action. There is also no reason to presume that had she known

immediate action was required she would have been able to comply, that reliable translation facilities were within her reach, and if they were, that she would have been able to arrange a visit within the time required. There is nothing to suggest that Zoila Alfonso ever had an opportunity to appeal the adverse determination of her unemployment benefits claim.[1]

---

[1] The majority, while holding that no translation is required, states that the conclusion that one was in fact supplied (despite Ms. Alfonso's assertion to the contrary) is "not unreasonable..." __ N.J. ___, ___ n.1 (slip op. at 2, n.1). It thereby adds insult to injury. The record properly before us permits only one conclusion: no translation was supplied. The material that the State seeks most untimely to add to that record does not at all affect that conclusion, even were we to consider it. Since some of that material was submitted at oral argument, and some (without motion) but five days before, plaintiff had no meaningful opportunity to address or rebut it, a circumstance that should preclude a court from reaching any conclusion on the matter. The material sought to be added to the record consists of "newly-discovered" records suggesting that an interpreter employed by the State was present during some portion of the claim interview, but the State has no proof whatsoever that the interpreter translated the determination, or even that the interpreter was present at the critical moment when the determination was delivered to plaintiff. The State further claimed at oral argument, for the first time in more than two years of litigation, that it was the general practice at the South Newark claims office to supply Spanish-speaking claimants with a form of determination translated into Spanish, but it has no proof whatsoever that this was done in Alfonso's case. The State knew, at least by the time the case was argued in the Appellate Division in 1980, that the lack of a translation was the central issue in this case. It was not until oral argument before us that it produced this material, explaining that a "final search" uncovered the documents related to the case, although earlier searches had been fruitless. It does not say whether it attempted to interview the interpreter, its own employee, when it first

(cont'd)

When the State knows that a person does not understand English, it has an obligation to provide notice in that person's language with a sufficient amount of information to trigger inquiry or action that will result in an appeal, unless the burden of providing that notice is so great that it outweighs the benefits of doing so. Guerrero v. Carleson, 9 Cal. 3d 808, 109 Cal. Rptr. 201, 512 P. 2d 833, 841 (1973)(Tobriner, J., dissenting), cert. den., 414 U.S. 1137, 38 L.Ed. 2d 762 (1974). The burden is on the State to show that it would be unreasonable to require notice in the claimant's language in cases where simple notice of the right to appeal and time limit for action is all that is needed.

---

1 (cont'd)
learned of the claim of lack of translation, or if indeed it ever attempted to interview her. After two years, and after effectively conceding the fact throughout the proceedings, including its brief before this Court, it now attempts to challenge plaintiff's story. Its proof is inherently weak; it concedes that it cannot present independent testimony of what happened at plaintiff's claims interview to overcome plaintiff's statement of the case. That statement required no corroboration then (since it was never challenged) nor would the majority--if it faced the issue--require any now, at a time when the State's totally unjustified delay in challenging the statement may have made corroboration impossible. "

The majority notes that its reference to this material is unnecessary in view of its holding. The intended effect, presumably, is to convey the impression, by suggesting plaintiff was indeed supplied with a translation at the time the determination was delivered, that the result here is just, even apart from constitutional issues. As noted above, we suggest that the majority can justify neither its result nor the adverse reflection on plaintiff's truthfulness by using this additional material.

This result is clearly mandated by the due process guarantees of the Fourteenth Amendment of the United States Constitution. The majority cites Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 94 L.Ed. 865 (1950), to reach a contrary result. But in fact, Mullane provides the strongest support for the conclusion that Zoila Alfonso was not given notice of her right to appeal. In the passage quoted by the majority, the Court in Mullane included these words:

> The notice must be of such nature as reasonably to convey the required information ... and it must afford a reasonable time for those interested to make their appearance. [339 U.S. at 314, 94 L.Ed. at 873 (citations omitted).]

The Court went on to say:

> [W]hen notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. [339 U.S. at 315, 94 L.Ed. at 874]

Mullane established a constitutional balancing test that requires us in determining whether due process was satisfied to weigh the burden on the state of giving notice that actually "convey[s] the required information" against the benefits to the individual receiving notice (and all others who will subsequently be benefitted by the state's efforts) in order to determine the state's duty in a given case.

> Against [the] interest of the State we must balance the individual interest sought to be protected by the Fourteenth Amendment. This is defined by our holding that "The fundamental requisite of due process of law is the opportunity to be heard." Grannis v. Ordean, 234 U.S. 385, 394, 58 L.Ed. 1363, 1368, 34 S.Ct. 779. This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest. [339 U.S. at 314, 94 L.Ed. at 873].

The state must prove that reasonable efforts have been made to give notice; the reasonableness of those efforts is measured in the Mullane balance.

The burden on the state to provide foreign language notice of appeal is composed of a number of factors. The state must determine what language the claimant speaks. This may involve training its personnel to elicit this information from applicants for benefits. It must acquire a translation of the salient material--usually very little--into the claimant's language, and communicate this translated information to the applicant.[2] These requirements amount to dollar expenditures and a degree of continuing vigilance on the part of state personnel to ensure that applicants are properly notified of their right to appeal adverse claims.

---

[2] There are a number of ways in which this burden may be met, some of which do not require more than the translation of a few lines. See infra, n.6 at ___(slip op. at 10).

The benefits to be derived from foreign language notice must be measured not only by the value to the individual whose claim is at issue, but also to others whose interests will be protected in the future. For the individual claimant, benefits include a real (as opposed to theoretical) opportunity to appeal, so that the applicant may acquire review of his or her claim without undue barriers not faced by an English-speaking claimant. If the claimant proves successful, she will receive the monetary benefits to which she is entitled. In addition to its cash value, this grant represents the claimant's right to enjoy the same benefits to which her years of work entitle her, as do all other claimants who qualify for this insurance.

Moreover, notice in the claimant's language relieves her of the difficult task of determining in a vacuum whether a notice is official and, if so, how quickly official notices must be translated. It is no small burden to acquire an accurate translation.[3] Claimants may have to travel some

---

[3] The danger of relying on family or friends for a translation was clearly shown in Hernandez v. Department of Labor, 83 Ill. 2d 512, 48 Ill. Dec. 232, 416 N.E. 2d 263 (Ill. 1981), and DaLomba v. Director of Division of Employment Security, 369 Mass. 92, 337 N.E. 2d 687 (1975), on which the majority relies. In each of those cases, claimants received notice of their denial of unemployment insurance benefits and promptly sought translations from friends. Unfortunately, the friends supplied inaccurate or incomplete translations. The courts nonetheless held that claimants had been given adequate notice. Thus, acquisition of an accurate translation may require a visit to an official agency to assure accuracy.

distance to an agency that assists non-English speaking persons to assure them of adequate assistance. This in itself is difficult when one does not speak the language of a host country, and with less and less public and private money available to fund such foreign language assistance programs, they are becoming fewer and farther between.

If the claimant is handed the determination notice by a staff member at the claims determination office, this will be some indication that the notice is official, and requires a translation. It does not, however, indicate the need for an especially speedy translation. Moreover, if a staff member makes a good faith attempt to communicate the substance of the determination to the claimant, and does not or cannot explain the right of appeal and the time limit for action, the claimant may leave the office believing she possesses all the critical information contained in the notice. She may thus abandon any effort to pursue a claim that resulted in an adverse determination. Alternatively, if the notice is mailed, the claimant must consider how important the printed message may be in order to decide how quickly to seek a translation.[4] It is not unreasonable to

---

[4] It is unrealistic to expect an individual to run to an assistance agency each time an "official-looking" notice arrives in the mail. There are too many mailed advertisements that are printed in an official-looking manner in order to encourage recipients to open them. Furthermore, the envelope and the contents may not appear official to a non-English speaking person, even though it would to others.

assume that a non-English speaking person needing translation assistance collects several pieces over a number of days before traveling to a service agency for help, thereby risking missing a deadline by a few days.

After the value of translation to the individual claimant is considered the balancing test must be completed by determining whether other persons will benefit by the effort expended by the state on that claimant's behalf. Once a translation is acquired and personnel trained to use it, the burden or cost of providing foreign language notice to others who follow is greatly reduced while the benefit is increased for each person who is "actually inform[ed]." Mullane v. Central Hanover Bank & Trust Co., supra, 339 U.S. at 315, 94 L.Ed. at 874.

Applying this test to the present case, it is clear that English notice to Zoila Alfonso was "a mere gesture [and] not due process," and that she was denied notice of her right to appeal the adverse ruling of her benefits claim. Mullane, supra, 339 U.S. at 315. The burden on the Department of Labor and Industry does not seem great. The State must pay for translations to be made and determine in what manner this translated information will be communicated to the claimant. It need not embark on a long and costly process to translate all the forms it uses in the benefits claims process.[5] It could simply attach a notice in Spanish that stated that the accompanying letter contained the decision in the person's benefits claim and required the applicant to act within seven days after its delivery but no later than ten

---

5 Note, however, that the State previously acquired translations of some of its forms concerning unemployment compensation. See letter from Mr. James Ware, then Assistant Commissioner of the New Jersey Department of Labor and Industry, to Ms. JoAnne Gibson, then Assistant Deputy Public Advocate, dated June 4, 1976, and attachments.

days after its mailing if he wanted to appeal; and that failure to act within that time would result in a loss of the right to appeal the decision. N.J.S.A. 43:21-6(b)(1).[6] This would clearly tell the claimant that prompt action was required without burdening the State with the responsibility of translating numerous forms.[7]

---

[6] See, e.g., Consolidated Edison of N.Y., Inc. v. Powell, 77 Misc. 2d 475, 354 N.Y.S. 2d 311, 316 (Civ. Ct. N.Y. 1974). There, the court reviewed a utility's proposed order for discontinuance of utility services and found it failed to comply with due process requirements. The court set forth the conditions to be met for the notice to comply and devised its own forms. Although it does not appear to have been requested by the parties and the rest of the notice was in English, the court headed the form with this warning:

> NOTICE! YOUR GAS OR ELECTRICITY MAY BE CUT OFF! IF YOU WISH A HEARING YOU MUST GO TO THE CLERK'S OFFICE OF THE CIVIL COURT AT (fill in address), PROMPTLY!
>
> AVISO! SU GAS O ELECTRICIDAD PUEDEN SER CORTADOS! SI USTED DESEA UNA AUDIENCIA USTED DEBE IR A LAS OFICINAS DEL SECRETARIO DE LA CORTE CIVIL EN (fill in address), INMEDIATAMENTE!

Another option available to the State is to provide staff members with a card on which the appeal notice is translated into several commonly used languages from which the staff could read aloud, or could point to the proper translation. I suggest that any one of these methods could be used to meet the due process mandate without requiring the State to choose any one in particular.

[7] State agencies in fact provide numerous publications for the assistance of Spanish-speaking residents. The fact that so many forms have been translated suggests that the burden of simply advising a claimant of the right of appeal and the time allowed is minimal.

(cont'd)

Balanced against this requirement are the benefits to be realized in this case. A Spanish-language notice would have given Zoila Alfonso the opportunity to appeal her denial

---

7 (cont'd)

The following are examples of such forms:

From the Department of Labor & Industry, Division of Unemployment and Disability Insurance:

Seguro por Desempleo e Incapacidad en New Jersey (Unemployment Insurance in New Jersey) PR-94S (R-5-81) (pamphlet).

Instrucciones para Solicitar Beneficios del Seguro por Desempleo (Spanish Language Instructions for Applicant Preparation of a Claim for Unemployment Benefits (BC 4A/B)) BC-407S (4-78)(one page).

Aviso Importante para Reclamantes de Beneficios Extendidos (EB)(Important Notice for Claiming Extended Benefits) EB-7-S (3-81)(one page).

Reglas Importantes para Solicitar Beneficios (Important Rules in Applying for Benefits) BC-336S (R-10-78)(one page).

Instrucciones para Llenar una Reclamación Continua para Beneficios por Desempleo (Spanish Language Instructions for the Completion of a Continued Claim for Unemployment Benefits) BC-41GS (9-78)(one page).

Instrucciones para Radicar una Reclamación Adicional por Beneficios de Desempleo (Spanish-language Instructions for Applicant Preparation of an Additional Claim for Unemployment Benefits (BC-4)) BC-408S (4-78) (one page).

Notificación de la Determinación (Spanish-language Explanatory Sheet for the Notice of Determination (BC-26B)-copy for claimant) BC-409S (5-78)(one page).

(cont'd)

of unemployment insurance benefits. She was functionally denied the right of appeal available to English-speaking

---

7 (cont'd)

Reclama por Correo para Beneficios de Desempleo al Volver a Trabajar (BD-260) (Spanish-language explanatory sheet for a R.T.W. mail claim form for Unemployment Insurance Benefits (BC-260)) BC-410S (7-78) (one page).

Notificación del Procedimiento para Investigar su Reclamación por Beneficios (Spanish-language version of "Claimant's Appointment for Fact-Finding Proceeding" (BC-91)) BC-412S (9-78) (one page).

Cuestionario para Reclamantes de Beneficios Extendidos (Questionnaire for Claiming Extended Benefits) EB-8-S (4-81) (one page).

Solicitud de Número de Registración para Extranjeros (Request for Alien Registration Number) DS-83 (R-8-80) (one page).

El Programa de Seguro por Incapacidad Temporera de New Jersey (The Temporary Disability Program in New Jersey) PR-117S (R-12-79) (pamphlet).

Instrucciones para Solicitar Beneficios del Seguro por Incapacidad-Plan Estatal (DS-1) (Instructions for Filing a Proof and Claim for Disability Benefits-State Plan (DS-1)) BC-411S (9-78) (one page).

Preguntas para Analizar su Elegibilidad (Spanish Language Eligibility Review Questionnaire) BC-413S (8-79) (one page).

Descalificación por Abandono Voluntario (Disqualification for Voluntary Abandonment) BC-33S (R-6-80) (one page).

Seguro por Incapacidad Temporera (Temporary Disability Insurance) DS-82 (R-9-80) (post card).

Aviso Importante (Important Notice) BC-415S (10-78) (attachment slip).

(cont'd)

claimants, and, assuming she was otherwise qualified for them, denied the cash benefits of unemployment insurance because she

---

7 (cont'd)

From the Department of Labor & Industry, Division of Workplace Standards (Office of Wage and Hour Compliance):

La Ley de Horas y Salarios de Nueva Jersey (New Jersey State Wage and Hour Law) MW-138 (R-1-81) (one page).

Aviso a Trabajadores Agrícolas (Notice to Farm Workers) (one page).

Leyes del Estado de Nueva Jersey, 1965 Capitulo No. 173 (Laws of the State of New Jersey, 1965 Chapter 173) MW 82S (R-4-76) (one page).

Leyes del Estado de Nueva Jersey, 1966 Capitulo No. 113 (Laws of the State of New Jersey, 1966 Chapter 113) (MW-167 (R-1-81) (one page).

Trabajadores Agrícolas (Farm Workers) MW-117 (R-1-81) (one page).

Ley de Registro para Encargado de Trabajadores de Nueva Jersey, P.L. 1975, c.49 Enmendado [amended] y [and] suplementando [supplemented] P.L. 1971, c. 192, efectivo 7 de Abril de 1975 (Crew Leader Registration Act) (22 pages).

Department of Labor & Industry, Division of Employment Services:

Noticia-Información Adicional Sobre Empleos (Notice-Additional Employment Information) NJES:JS 030703 (R-4-78) (one page).

Department of Labor & Industry, Division of Workers Compensation:

Lo Que Cada Trabajador Debe Saber Acerca de los Beneficios de Compensación al Trabajador en New Jersey (What Every Worker Should Know about Workers Compensation Benefits in New Jersey) WC-338S (R-10-80) (pamphlet).

(cont'd)

did not get a translation quickly enough. A Spanish-language notice of the right to appeal would rectify both these penalties.

---

7 (cont'd)

Department of Labor & Industry, Division of Vocational Rehabilitation:

¿Incapacitado? La Rehabilitación Vocacional Puede Prestarle Ayuda (Disabled? Vocational Rehabilitation Can Offer You Help) DVR-105S (R-11-80)(pamphlet).

División de Rehabilitación Vocacional de Nueva Jersey (Division of Vocational Rehabilitation in New Jersey) DVR-860S (R-10-81)(pamphlet).

¿Presiones Debido a las Condiciones de Trabajo? (Pressure due to Work Conditions?) DVR-858S (R-9-81).

Department of Civil Service:

Usted ha Pasado su Examen del Servicio Civil. ¿Qué Sucede Ahora? (You have Passed your Civil Service Test. What Happens Next?) May 1977 (pamphlet).

Department of the Public Advocate:

La Voz Pública de los Ciudadanos de Nueva Jersey. (The Voice of the Citizens of New Jersey)(pamphlet).

Department of Law and Public Safety, Division of Motor Vehicles:

Manual del Conductor (Driver's Manual) (pamphlet).

Department of Insurance:

Esta es la Ley Que "No Culpa" en Nueva Jersey (No Fault Insurance Law in New Jersey) (pamphlet).

Pare para Comprar su Seguro de Automóviles (Stop Before you Buy Automobile Insurance) 1977 (pamphlet).

Department of Transportation:

¿Es su Compañía una Empresa de Negocios Propiedad de Minoría? (Is your Company a Minority Business Enterprise?) 12-80 (pamphlet).

New Jersey State Council on the Arts:

Guia para Becas 1981-82 (Grants Guidelines 1981-82) (pamphlet).

(cont'd)

The benefits are multiplied when it is considered how many applicants may need Spanish-language

---

7 (cont'd)

Department of Human Services, Division of Medical Assistance and Health Services:

Paga Inmunizar a tu Hijo un Mensaja de Medicade (It Pays to Immunize your Child - A Message from Medicaid) (pamphlet).

Medicade--¿Que Es? ¿Quienes son Elegibles? ¿Como se Usan los Beneficios? (Medicaid-What is it? Who is Eligible? How are the Benefits Used? March 1979 (pamphlet).

Department of Human Services, Division of Public Welfare:

Cupones de Alimentos Hacen la Diferencia en Nueva Jersey (Food Stamps Make the Difference in New Jersey) FSP-920S Rev. 2/80 (pamphlet).

Audiencias Imparciales en el Programa de Cupones para Alimentos (Fair Hearings in the Food Stamp Program) FSP-196S (3/80) (pamphlet).

Como Solicitar para S.S.I. (How to Apply for S.S.I.) GA-191 (12/80) (pamphlet).

Subsidio de Energía para el Hogar (Energy Subsidy for the Home) EP-17S (11/80) (pamphlet).

Servicios en los Programas de Mantenimiento para Niños y Paternidad (Children and Maternity Substenance Program) CSP-140S (6/80) (pamphlet).

Sus Derechos y Responsabilidades en el Programa de AFDC (Your Rights and Responsibilities in the AFDC Program) PA-197S (6/80) (pamphlet).

Hora de Trabajo--Mejor Tiempo para Familias de AFDC (Opportunity to Work--Better Times for AFDC Families) PA-198S (4/77) (pamphlet).

El Programa de Asistencia General en Nueva Jersey (The New Jersey General Assistance Program) (pamphlet).

(cont'd)

notice. Persons of Hispanic origin make up a sizeable portion of New Jersey's population.[8] The unemployment claims division may thus be able to assist a good many applicants if it is equipped with Spanish translations of the more important claims provisions.[9]

Moreover, there are special considerations of fairness to be accorded Spanish-speaking persons. Spanish, unlike any other language, has quasi-official status in the United States because of our relationship to the Commonwealth of Puerto Rico. Puerto Ricans are United States citizens with the same responsibilities and benefits of other United States citizens, but schools in Puerto Rico are conducted in Spanish. Thus, unlike non-English speaking immigrants from foreign countries, non-English speaking Puerto Ricans are not

---

7 (cont'd)

Sus Derechos y Responsabilidades en el Programa de Asistencia General (Your Rights and Responsibilities in the General Assistance Program) GA-197s (6/80) (pamphlet).

Audiencias Imparciales en el Programa de Asistencia General (Fair Hearings in the General Assistance Program) GA-196 (6/81)(pamphlet).

8 In 1980, the population of persons of Hispanic origin in New Jersey was 491,867, while the total population of the State was 7,364,158. Hispanic persons thus accounted for 6.68 percent of New Jersey's population. See U.S. Dep't of Commerce, Bureau of the Census, 1980 Census of Population and Housing, Final Population and Housing Counts (1981).

9 The number of unemployed persons of Hispanic origin is disproportionately greater than that of the populace at large. In 1977, 17.2 percent of all Hispanics in the labor force in New Jersey were unemployed; the unemployment rate for all persons in the labor force in New Jersey was 9.4 percent. N.J. Dep't of Labor & Industry, Manpower Information for Affirmative Action Programs, Table 2 at 5 (1977).

required to learn English before they may exercise their right to vote as United States citizens.[10] Spanish is thereby given special recognition as the native language of many United States citizens. While the majority may be correct that the United States may be characterized as "an English speaking country," see __ N.J. at ___ (slip op. at 8), neither the United States nor the State of New Jersey has established English as its official language.[11]

---

10 See 8 U.S.C. § 1402; 8 U.S.C. § 1423; 42 U.S.C. § 1973b(e); and see generally discussion in Puerto Rican Organization for Political Action v. Kusper, 490 F. 2d 575, 578 (7th Cir. 1973).

Citizenship is not a prerequisite for eligibility for Unemployment Compensation benefits. N.J.S.A. 43:21-4(h)(i)(1).

11 The State has never adopted an official language. While New Jersey laws give broad recognition to English as the language of predominant use, increasing recognition and use of Spanish is in evidence.

In New Jersey, newspapers qualified as legal newspapers must be printed and published in English within the state at least once a week and continuously for at least one year, N.J.S.A. 35:1-2, and State, county, municipality and other official notices must be published in an English language newspaper. N.J.S.A. 35:1-2.1 and 35:1-2.2. Public records must be in English to be entitled to recording and filing, N.J.S.A. 47:1-2, and laws and documents must be printed in English. N.J.S.A. 52:36-4.

The State requires the primary ballots and samples of the general election and primary ballots to be printed in English and Spanish in election districts in which the primary language of 10 percent or more of the registered voters is Spanish. N.J.S.A. 19:14-21, 19:31-22.4, 19:49-4. Moreover, "in any county in which there is at least one election district in which bilingual sample ballots must be provided ..." bilingual voter registration forms must be prepared. N.J.S.A. 19:31-6.4(c).

(cont'd)

And when, implicitly and explicitly, Spanish has achieved some measure of official recognition, the Spanish-speaking population may reasonably expect that information of great importance to their well-being will be conveyed to them in a manner that communicates the essential information required.[12]

---

11 (cont'd)

New Jersey has established bilingual education programs, N.J.S.A. 18A:35-15 et seq., and makes available evening instruction of foreign-born residents in the English language. N.J.S.A. 18A:49-1 et seq.

Cf. Ill. Rev. Stat Ch. 1, § 3005: "The official language of the State of Illinois is English." Even so, the court in Puerto Rican Org'n for Political Action v. Kusper, said "This statute ... has never been used to prevent publication of official materials in other languages." 490 F. 2d 575, 577 (7th Cir. 1973).

The United States requires a person to have "an understanding of the English language" in order to be naturalized as a citizen of the United States. 8 U.S.C. § 1423. But the requirement is waived for persons "physically unable to comply therewith," or persons more than 50 years old who have lived in the United States for more than a total of 20 years. Id. Moreover, "understanding" encompasses only an "ability to read [and] write simple words and phrases ...." Id.

In legislation establishing programs for bilingual education, the Congress created a program to "provide instruction designed to enable [children of limited English proficiency], while using their native language, to achieve competence in the English language." 20 U.S.C. § 3221.

12 Some agencies already require Spanish language translations. See, e.g., N.J.A.C. 10:81-2.15 and 10:81-7.1 relating to Public Assistance benefits:

(cont'd)

I would hold here, then, that for Spanish-speaking persons in New Jersey, the benefits of

---

12 (cont'd)

18:81-2.15 Notice and information to client

(a) If immediate need is not apparent and a decision of approval or disapproval is not reached within 30 days of application, the CWB shall notify the applicant in writing of this fact and the reason for the delay. If the lack of decision is due to circumstances within the control and knowledge of the applicant, the welfare board will remind the applicant of the steps he/she must take to enable the welfare board to make a decision. (This notice shall include a sentence in Spanish cautioning the client that it related to his/her eligibility for public assistance and if he/she does not understand the notice he/she should contact the CWB.)

18:81-7.1 Notice to client or[sic] county welfare agency decision

(c) All notification of agency decisions shall state in clear, simple language the nature of the decision, the effective date of the decision and the accurate factual and legal basis for the decision. In adverse decisions, it shall include at least citation and title of all applicable regulations (see subsection (k)1 of this section). Additionally, notices shall include an explanation of the client's right to a conference, right to a fair hearing, and the circumstances under which assistance is continued if a fair hearing is requested. This notice shall include a sentence in Spanish cautioning the client that it relates to a change in his/her grant and if he/she does not understand the notice, he/she should contact the CWA. (See appendix C for Form PA-15).

N.J.A.C. 10:85-7.2 re General Assistance benefits:

10:85-7.2 Notices to applicants/recipients

(c) Notices of denial, reduction or termination and time-limited notices shall state in clear, simple language the nature of the action, the effective

(cont'd)

providing Spanish language notice outweigh the burdens as a matter of law. As to persons speaking other languages, the balancing test of a proper due process analysis would have to be applied when that case arose.

I would think, however, that due process requires notice in other well-known languages as well. Thus, when the State knows that a claimant speaks only Polish, Hungarian, Italian, Chinese, Portuguese, or another relatively common language, it should be required to give notice of appeal in that language.

---

12 (cont'd)

date and the reason such action is being taken. (See notice forms in Appendix A.)

1. Basis for action: In addition, all notices of adverse action (denials, reductions and terminations) shall contain the citation upon which each action is based.

2. Right to appeal: The notice shall include an explanation of the client's right to request, within ten days, a local hearing and his/her further right to a State fair hearing if a local hearing is not convened within 15 days of the date of the hearing request.

3. Statement in Spanish: Each notice shall include a statement in Spanish cautioning the individual that the information contained therein related to his/her eligibility for assistance and, if he/she does not understand it, he/she should contact the MWD.

N.J.A.C. 10:89-5.2 re Home Energy Assistance benefits:

10:89-5.2 Notice requirements

(a) All notices will include a statement regarding the right to appeal any decision regarding eligibility or amount of benefit and will be available in both English and Spanish.

I am aware that many generations of non-English speaking persons managed to survive in this country without such assistance. But the fact that they struggled is insufficient reason to require others to be penalized as well. Due process is an elastic concept, one that takes new form as our standards of fairness and compassion change with a changing society. Just as it would now be unthinkable for a judge to allow a pro se litigant to leave the courtroom without understanding his right to appeal and the time limit for action, so should it be incredible that an unemployment benefits claimant should be allowed to leave the claims office without being helped to understand these rights.

I do not intend to imply any translation requirements for other English-language notices, e.g., legal notices in newspapers, notices of rule-making proceedings, or the innumerable other notices required by statute or constitutional mandate. All I address here is the right of a claimant or litigant to receive notice of information central to his or her claim or action.[13]

---

13 When non-English speaking people are represented by counsel, an adversary or court may assume that communication to counsel is sufficient notice, where notice to the party is not otherwise required. In this connection I applaud the distribution by the New Jersey State Bar Association of a brochure listing the names of lawyers with proficiency in any of 27 foreign languages. 109 N.J.L.J. supplement (Feb. 4, 1982). Obviously such information can be vital to potential clients and their friends. I have no doubt that the fact of such proficiency can be appropriately included in advertisements by lawyers. Cf. N.J. Advisory Comm. on Professional Ethics No. 461, 106 N.J.L.J. 221 (Sept. 11, 1980), refusing, in accordance with its policy, to pass on the propriety of a lawyer's advertisement indicating fluency in Spanish.

Due process requires notice. When it is not given to English-speaking people, they can set aside the proceedings, even though, by some extra effort, they might have been able to obtain timely notice themselves. Notice is the birthright of all people in this country, not just those who are vigilant enough to make daily inquiry about the status of proceedings, or to seek independent explanation of otherwise incomprehensible forms. When the State knows the claimant or litigant does not understand English, the State has the obligation to provide notice that can be understood. The constitutional guarantees of non-English speaking persons cannot be left to the protection of hoped-for humanitarian acts. These guarantees are theirs by right, not by charity.

There are undoubtedly better, and preferable, means than litigation to achieve notice to non-English speaking people. Agencies could voluntarily provide it, the Legislature could require it, or perhaps private agencies could facilitate it. Many things can be achieved without the aid of the courts. This State, as a result of increasing compassion and understanding, as well as, perhaps, the increasing political strength of Hispanic-Americans, is moving in the direction of providing such information in Spanish. That the practice will all some day be remedied, however, and by a process preferable to court order, is no answer to the claim of denial of constitutional

right. The tradition of constitutional deprivation in these matters does not lend legitimacy to the practice. Today prisoners are freed by courts if their conditions of confinement amount to cruel and unusual punishment; those involuntarily confined to mental institutions are entitled to periodic hearings and minimal treatment. If our courts are capable of correcting such long-lasting substantive deprivations at enormous cost to the State there is no reason why the gross unfairness of the procedure used here cannot be corrected by courts responding to the clearest constitutional command: the notice that is the bedrock of due process. It poses no danger to our patriotism or our unity, or to the certainty that we will remain an English-speaking nation. It shows only that we are strong enough to give meaning to fundamental rights when they are possessed by non-English speaking people in our midst, and that we are confident enough about the future to admit that perhaps we may have been wrong in the past.

Some might think that the rule of the majority provides an incentive to learn English. No such incentive is needed, for every day of their lives provides Hispanic-Americans with innumerable, often devastating reminders of their disadvantaged position resulting from the language barrier

they face. There is no carrot in this decision, only a stick.

I find that Zoila Alfonso should have been given notice of her right to appeal and the time limit for filing her appeal, and she was not. She was thereby denied due process of law by the State.

I therefore would reverse and remand the matter to the Division's Appeal Tribunal for a hearing on the merits.

Justice Pashman joins in this opinion.

96 S.Ct. 492, 42 L.Ed.2d 292 (1974); *State v. Jones*, 18 Or.App. 343, 345-346, 525 P.2d 194, 195-196 (Or.App.1974); *State v. Lightle*, 210 Kan. 415, 416, 502 P.2d 834, 836 (Sup.Ct.1972), cert. den. 410 U.S. 941, 93 S.Ct. 1406, 35 L.Ed.2d 607 (1973).

Furthermore, the statute pursuant to which the blood sample was taken adequately protected defendant's constitutional rights to due process. *N.J.S.A.* 39:4-50.2 (amended by *L.* 1977, *C.* 29, § 3), in pertinent part, provides:

> (a) Any person who operates a motor vehicle on any public road, street or highway or quasi-public area in this State shall be deemed to have given his consent to the taking of samples of his breath for the purpose of making chemical tests to determine the content of alcohol in his blood; provided, however, that the taking of samples is made in accordance with the provisions of this act and at the request of a police officer who has reasonable grounds to believe that such person has been operating a motor vehicle in violation of the provisions of *R.S.* 39:4-50.
>
> (b) A record of the taking of any such sample, disclosing the date and time thereof, as well as the result of any chemical test, shall be made and a copy thereof, upon his request, shall be furnished or made available to the person so tested.
>
> (c) In addition to the samples taken and tests made at the direction of a police officer hereunder, the person tested shall be permitted to have such samples taken and chemical tests of his breath, urine or blood made by a person or physician of his own selection.
>
> (d) The police officer shall inform the person tested of his rights under subsections (b) and (c) of this section.

The State complied with the requirements of *N.J.S.A.* 39:4-50.2. Patrolman Scott specifically advised defendant before he signed the hospitalization request, consent and release form that he could have a blood sample taken and tested by a physician of his own choice. Defendant did not avail himself of this opportunity and certainly he cannot complain now that he was deprived of due process by reason of the fact that the sample taken by the State was consumed. Accordingly, we have no hesitancy in affirming that the trial judge properly ruled that the results of defendant's alcohol test were admissible in evidence.

Affirmed.

ZOILA ALFONSO, APPELLANT, v. BOARD OF REVIEW, DEPARTMENT OF LABOR AND INDUSTRY, STATE OF NEW JERSEY AND KORVETTES, RESPONDENTS.

Superior Court of New Jersey
Appellate Division

Argued November 5, 1980—Decided December 2, 1980.

SYNOPSIS

The Department of Labor and Industry, Board of Review, affirmed a decision of Appeal Tribunal that the Tribunal did not have jurisdiction of unemployment compensation determination as a result of late filing of appeal, and unemployment compensation claimant appealed. The Superior Court, Appellate Division, held that notwithstanding fact that claimant could neither speak nor read English, claimant was not denied procedural due process rights under the Fourteenth Amendment to the United States Constitution when her appeal was dismissed because of late filing as determination of local claims office denying claimant benefits specified that any appeal had to be in writing and had to be received or postmarked within seven days after delivery of determination.

Affirmed.

Constitutional Law ⇐278.7(3)
Social Security and Public Welfare ⇐611.5

Notwithstanding fact that unemployment compensation claimant could neither speak nor read English, claimant was not denied procedural due process rights under the Fourteenth Amendment to the United States Constitution when her appeal of determination denying her benefits was dismissed because of late filing as determination denying claimant benefits specified that any appeal had to be in writing and had to be received or postmarked within seven days after delivery of determination. U.S.C.A.Const. Amend's. 5, 14; N.J.S.A. 43:21-5(a), 43:21-6(b)(1).

Before Judges FRITZ, POLOW and JOELSON.

Jose E. Pardo, II, argued the cause for appellant (*W. Marshall Prettyman*, Essex Newark Legal Services, attorney).

Michael J. Haas, Deputy Attorney General, argued the cause for respondent Board of Review (*John J. Degnan*, Attorney General of New Jersey, attorney; *Michael S. Bokar*, Deputy Attorney General, of counsel; *Donna J. Kelly*, Deputy Attorney General, on the brief).

PER CURIAM.

Appellant's claim for unemployment benefits was denied at the local claims office level on the ground that she left work voluntarily without good cause attributable to such work whereby she was disqualified for benefits. *N.J.S.A.* 43:21-5(a). That determination contained explicit notice that any appeal must be in writing and must be received or postmarked within seven days after delivery of the determination. She appealed to the Appeal Tribunal. The Appeal Tribunal determined, in findings that are not here disputed, that the disqualifying determination was delivered to appellant on September 25, 1979. Inasmuch as her appeal to the Appeal Tribunal was not filed until October 5, 1979, the Appeal Tribunal dismissed the appeal on the ground that it was deprived of jurisdiction by the late filing. *N.J.S.A.* 43:21-6(b)(1); *Lowden v. Board of Review*, 78 *N.J.Super.* 467 (App.Div.1963). The Board of Review affirmed.

Appellant's argument before us is premised upon the fact that she neither speaks nor reads English and that since the notice of the determination was written in English, she did not receive sufficient notice to commence the running of the statutory time for appeal. Her arguments are framed in terms of the denial of "procedural due process rights under the Fourteenth Amendment of the United States Constitution" with the consequence that "respondent has violated 42 *U.S.C.* § 2000d and the ensuing regulations under 29 *C.F.R.* § 31.3(b)(1)(i)(iv); (b)(6)(i)(ii)." A 'stories' extension of appellant's argument to us is that notice

cannot be imputed to a claimant for the purpose of the statutory time period unless that person has been served with a notice written in a language which the person so served can read or, in the alternative, unless the Division causes the notice to be read to the claimant in a language which the claimant understands.

We have no doubt that either the Legislature or administrative regulation might properly and well provide for multilingual notices. Until this occurs, we also have no doubt that, given the single official language status of this country considered in the context of the great opportunity a contrary rule would provide for procrastination or even intentional misrepresentation, imposing upon a claimant the burden of securing a translation of a notice written in English offends neither the Constitution, the Civil Rights Act nor our sense of fair play (for which read due process). *Carmona v. Sheffield*, 475 *F.2d* 738 (9 Cir. 1973); *Guerrero v. Carleson*, 9 *Cal.3d* 808, 512 *P.2d* 833, 109 *Cal.Rptr.* 201 (1973), cert. den. *sub nom. Guerrero v. Swoap*, 414 *U.S.* 1137, 94 *S.Ct.* 883, 38 *L.Ed.2d* 762 (1974). As is observed by a justice of the court of last resort in a state whose roots were of the Spanish culture, "[t]he United States is an English speaking country." *Guerrero, supra*, 9 *Cal.3d* at 813, 512 *P.2d* at 835, 109 *Cal.Rptr.* at 203.

Affirmed. No costs.

STATE OF NEW JERSEY, PLAINTIFF-RESPONDENT, v. MELVIN EARL PHILLIPS, DEFENDANT-APPELLANT.

Superior Court of New Jersey
Appellate Division

Submitted October 7, 1980—Decided December 11, 1980.

SYNOPSIS

Defendant entered plea of guilty to several counts of an indictment and was sentenced by the Superior Court, Law

BR-...118,096-C

BOARD OF REVIEW
DIVISION OF EMPLOYMENT SECURITY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF NEW JERSEY

IN THE MATTER OF

ZOILA ALFONSO
104 JEFFERSON STREET
NEWARK, NEW JERSEY 07105

S S NO. 140-48-5974
DATE OF CLAIM DECEMBER 29, 1978

EMPLOYER KORVETTES

ORDER AFFIRMING
ORDER OF DISMISSAL

The claimant having filed a timely appeal from an Order of the Appeal Tribunal (ATN79-4568) dismissing the appeal taken to it from the Deputy's determination on the ground that it was filed after the expiration of the statutory appeal period and,

It appearing that the appeal was not filed within the time provided by R. S. 43:21-6(b)(1), and by reason of said provisions the Deputy's determination having become final and since the appeal was properly dismissed,

IT IS on this eighth day of November 1979

ORDERED, that the Appeal Tribunal Order of Dismissal (AT N79-4568) be affirmed.

BOARD OF REVIEW

/s/ HOWARD HEALD

/s/ MORTON GOLDBLATT

/s/ STANLEY WASYLYK

FB:ra

A-6

37-A

UNEMPLOYMENT ... Y INSURANCE

OP... OF DISMISSAL

APPEAL TRIBUNAL

DOCKET NO. N79-4568

S. S. NO. 140-48-5974

DATE OF CLAIM: 12-29-78

APPELLANT: ☐ Employer ☒ Claimant

IN THE MATTER OF:

Zoila Alfonso
104 Jefferson St.
Newark, N.J.

The claimant appealed on 10-5-79 from the Division's determination delivered 9-25-79 and holding the claimant disqualif... for benefits from 9-2-79.

The appeal not having been filed within seven calendar days from the date of delivery thereof, as required by R.S. 43:21-6 (b) (1), the determination became final and cannot be reviewed on the merits.

It is, therefore, ORDERED on this seventeenth day of October 197 9 that this appeal be, and the same is, hereby dismissed.

Date of Mailing: 10-17-79

Christine Mc Ternan
Appeals Examiner
Christine Mc Ternan

FOR RIGHT OF APPEAL AND OTHER IMPORTANT INFORMATION, SEE REVERSE SIDE.

EMPLOYER:

Korvette's
169 Constabel Hook Rd.
Bayonne, N.J.

L.O. 910

☒ UA dh

AT-758 (R-6-77) CLAIMANT

A-3

38-A

NOTICE OF DETERMINATION

N.J. DIV. OF UNEMPLOYMENT AND DISABILITY INSURANCE
SOUTH NEWARK CLAIMS OFFICE
120 CLINTON AVE. 940
NEWARK, N. J. 07114

NAME OF CLAIMANT

SOC. SEC. NO. | FIRST DAY OF BENEFIT YEAR | PROGRAM CODE

1. ☒ It is DETERMINED; ☐ It is REDETERMINED that the Determination dated _____ is AFFIRMED, or follo MODIFIED

☐ YOU ARE ELIGIBLE FOR BENEFITS FROM _____

☒ YOU ARE INELIGIBLE FROM 9-11-74 THROUGH 9-21-74

☒ You will continue to be ineligible as long as there is no change in the facts upon which this determination is based. If the facts change, you should apply to the Unemployment Insurance Claims Office nearest your home for reassertion of your claim.

☒ YOU ARE DISQUALIFIED FROM 9-2-74 THROUGH indef

☐ YOU ARE INELIGIBLE FROM _____ through the end of the 4th week immediately following the bi of your child.

REASON FOR DETERMINATION	BASIS FOR THE DETERMINATION
01 ☒ Unavailable for work	
02 ☐ Unable to work	
03 ☐ Not actively seeking work	
04 ☒ You left your work voluntarily without good cause ATTRIBUTABLE TO SUCH WORK. (You will continue to be disqualified for benefits until you have earned in employment four times your weekly benefit rate.)	
05 ☐ Discharge for misconduct connected with your work *(See reverse side)*	
06 ☐ Failure, without good cause, to accept or apply for suitable work	
07 ☐ Failure to meet reporting requirements	
08 ☐ Remuneration in lieu of notice	
09 ☐ Not applicable	
10 ☐ Employed - full time	
11 ☐ Employed - earnings	
12 ☐ Voluntary quit disqualification still in effect	
13 ☐ Less than 7 days or other:	
14 ☐ Job Training	

EMPLOYER

DETERMINED BY

REDETERMINED BY

DATE DELIVERED | DATE MAILED

RIGHT OF APPEAL Any appeal from this determination must be in writing and must be received or postmarked within seven (7) da after date delivered or within ten (10) days after date mailed. (Read Important Notice On Other Side)

A-1

39-A A-1

SUPREME COURT OF NEW JERSEY

No. A-37 September Term 1981

On appeal from Appellate Division, Superior Court

On certification to

ZOILA ALFONSO,

Appellant,

v.

BOARD OF REVIEW, DEPARTMENT OF LABOR AND INDUSTRY, STATE OF NEW JERSEY,

Respondent.

Decided April 26, 1982

Chief Justice Wilentz Presiding

Opinion by Justice Clifford

Dissenting/Concurring opinion by Chief Justice Wilentz

CHECKLIST	Affirm	REVERSE & REMAND	Modify	Concur in Result
The Chief Justice		X		
Mr. Justice Pashman		X		
Mr. Justice Clifford	X			
Mr. Justice Schreiber	X			
Mr. Justice Handler	X			
Mr. Justice Pollock	X			
Mr. Justice O'Hern	X			
Totals	5	2		

48-A

filed by mail
July 23, 1982

IN THE SUPREME COURT OF THE
STATE OF NEW JERSEY

Docket No. A-37

ZOILA ALFONSO,

Appellant,

vs.

BOARD OF REVIEW,
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF NEW JERSEY

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Zoila Alfonso, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of New Jersey, affirming the decision of the New Jersey Superior Court Appellate Division, denying appellant a hearing on the merits of her claim for unemployment benefits entered in this action on April 26, 1982.

This appeal is taken pursuant to 28 U.S.C. Section 1257(2).

Bernard K. Freamon
Seton Hall Law School
1095 Raymond Blvd.
Newark, New Jersey 07102
Counsel of Record

Jose E. Pardo II
41 64th Street
West New York, New Jersey

41-A

Harris David
Acting Director
Essex-Newark Legal Services
18 Rector Street
Newark, New Jersey 07102
Counsel for Appellant

Note 18.3

sation commission were published, and no absolute privilege attached. Id.

19. Evidence

Decision of the appeal tribunal and the board of review, department of employment security, that claimant quit her job because the work was too heavy and the working area too cold was supported by substantial evidence. Stonco Elec. Products Co. v. Board of Review, Division of Employment Sec., Dept. of Labor and Industry, 106 N.J.Super. 6, 254 A.2d 111 (1969).

Evidence of an employee's failure to seek redress of his grievances before quitting, including failure to press his right to pursue a grievance procedure, is relevant and probative on bona fides of his claim to unemployment benefits, but failure to do so does not, in itself, disqualify employee from benefits, disentitle him to benefits, or establish that grievances alleged to have produced quitting were not sufficient to constitute good cause. Id.

Employee who quits job voluntarily and then seeks unemployment compensation has burden of proving that he quit with good cause attributable to work. Zielenski v. Board of Review, Division of Employment Sec., Dept. of Labor and Industry, 85 N.J.Super. 46, 203 A.2d 685 (1964).

Claimant has burden of establishing right to unemployment compensation. Id.

19.5 Burden of proof

Burden of proof is on unemployment compensation claimant to establish that voluntary separation from employment was for good cause attributable to such work. Morgan v. Board of Review, Division of Employment Sec., Dept. of Labor and Industry, 77 N.J.Super., 209, 185 A.2d 870 (1962).

20. Retirement

Commuting was merely a condition of employment which employee accepted by continuing in employ after plant moved, and her subsequent retiring, assertedly for excessive traveling, after she had worked long enough that she could receive social security benefits, was not for a good cause attributable to work within unemployment compensation statute requirements, and she was accordingly disqualified from benefits. Morgan v. Board of Review, Division of Employment Sec., Dept. of Labor and Industry, 77 N.J.Super. 209, 185 A.2d 870 (1962).

21. Discharged

Whether employee voluntarily left work in sense of quitting within this section disqualifying him for unemployment benefits or whether he was discharged by employer so as to come within different statutory provision disqualifying him from benefits for week in which he was discharged for misconduct and for five weeks immediately following is to be determined by board of review on analysis of evidence and specific findings of fact supportive of its conclusion. Savastano v. Board of Review, Division of Employment Sec., Dept. of Labor and Industry, 99 N.J.Super. 397, 240 A.2d 172 (1968).

Arbitrator's ruling that employee was not discharged for work-connected misconduct but was only suspended was fact calling for legal conclusion by Division of Employment Security Board of Review that claimant was not discharged where ruling was known to Board. Schock v. Board of Review, Division of Employment Sec., Dep. of Labor and Industry, 89 N.J.Super. 113, 214 A.2d 40 (1965), affirmed 46 N.J. 231, 215 A.2d 532.

Unemployment compensation benefits claimant was not finally discharged within statutes disqualifying claimants who are discharged or misconduct connected with work where under grievance procedure dismissal was subject to review, reversal or modification by arbitrator. Id.

Division of Employment Security Board of Review cannot find as fact that employee was discharged when in truth he was not discharged in sense of final determination of employment relationship. Id.

22. Federal employees

Claimant's right to unemployment compensation must be determined under New Jersey Unemployment Compensation Law even though claimant had been federal employee. Stauha v. Board of Review, Division of Employment Sec., Dept. of Labor and Industry, 93 N.J.Super. 451, 226 A.2d 183 (1967).

23. Grievance procedure

Although a grievance procedure had been set up under a collective bargaining agreement where claimant worked to achieve expenditious resolution of labor disputes, and although working conditions which complainant complained of, namely heavy work and a cold working area, were likely within purview of agreement, claimant was not required to seek adjustment of her grievances under agreement before quitting her job and applying for unemployment compensation benefits. Stonco Elec. Products Co. v. Board of Review, Division of Employment Sec., Dept. of Labor and Industry, 106 N.J.Super. 6, 254 A.2d 111 (1969).

24. Review

Finding of appeal tribunal of Division of Employment Security that employee had not been "discharged for misconduct connected with his work" was not binding upon court hearing action by former employee to recover damages from former employer by reason of employee's allegedly wrongful discharge. DeMarco v. Thatcher Furnace Co., 103 N.J.Super. 253, 246 A.2d 773 (1968).

43:21-6. Claims for benefits

(a) Filing. Claims for benefits shall be made in accordance with such regulations as the Director of the Division of Unemployment and Temporary Disability Insurance of the Department of Labor and Industry of the State of New Jersey may approve. Each employer shall post and maintain on his premises printed notices of his subject status, of such design, in such numbers and at such place as the director of the division may determine to be necessary to give notice thereof to persons in the employer's service. Each employer shall give to each individual at the time he becomes unemployed a printed copy of benefit instructions. Both the aforesaid notices and instructions shall be supplied by the division to employers without cost to them.

(b)(1) Procedure for making initial determinations with respect to benefit years commencing on or after January 1, 1953.

A representative or representatives designated by the director of the division and hereafter referred to as a "deputy" shall promptly examine the claim, and shall notify the most recent employing unit and, successively as necessary, each employer in inverse chronological order during the base year. Such notification shall require said employing unit and employer to furnish such information to the deputy as may be necessary to determine the claimant's eligibility and his benefit rights with respect to the employer in question and such notification shall also provide the most recent chargeable employer in the base year with the name and address of the most recent employing unit of the claimant.

In his discretion, the director may appoint special deputies to make initial or subsequent determinations under subsections 4(f) and 5(d) of this chapter.

If any employer or employing unit fails to respond to the request for information within 7 days after the mailing of such request, the deputy shall rely entirely on information from other sources, including an affidavit to the best of the knowledge and belief of the claimant with respect to his wages and time worked. Except in the event of fraud, if it is determined that any information in such affidavit is erroneous, no penalty shall be imposed on the claimant.

The deputy shall promptly make an initial determination based upon the available information. The initial determination shall show the weekly benefit amount payable, the maximum duration of benefits with respect to the employer to whom the determination relates, and also shall show whether the claimant is ineligible or disqualified for benefits under the initial determination. The claimant and the employer whose account may be charged for benefits payable pursuant to said determination shall be promptly notified thereof.

Whenever an initial determination is based upon information other than that supplied by an employer because such employer failed to respond to the deputy's request for information, such initial determination and any subsequent determination thereunder shall be incontestable by the noncomplying employer as to any charges to his employer's account because of benefits paid prior to the close of the calendar week following the receipt of his reply. Such initial determination shall be altered if necessary upon receipt of information from the employer, and any benefits paid or payable with respect to weeks occurring subsequent to the close of the calendar week following the receipt of the employer's reply shall be paid in accordance with such altered initial determination.

The deputy shall issue a separate initial benefit determination with respect to each of the claimant's base year employers, starting with the most recent employer and continuing as necessary in the inverse chronological order of the claimant's last date of employment with each such employer. If an appeal is taken from an initial determination as hereinafter provided by any employer other than the first chargeable base-year employer, then such appeal shall be limited in scope to include only one or more of the following matters:

(A) The correctness of the benefit payments authorized to be made under the determination;

(B) Fraud in connection with the claim pursuant to which the initial determination is issued; or

(C) The refusal of suitable work offered by the chargeable employer filing the appeal.

The amount of benefits payable under an initial determination may be reduced or canceled if necessary to avoid payment of benefits for a number of weeks in excess of the maximum specified in subsection (d) of section 43:21-4 of this Title.

Unless the claimant or any interested party within 7 calendar days after delivery of notification of an initial determination or within 10 calendar days after such notification was mailed to his or their last-known address and addresses, files an appeal from such decision, such decision shall be final and

benefits shall be paid or denied in accordance therewith, except for such determinations as may be altered in benefit amounts or duration as provided in this paragraph. ~~If an appeal is duly filed, benefits with respect to the period covered by the appeal shall be payable only after a determination of entitlement by the appellate tribunal;~~ benefits Benefits payable for periods pending an appeal and not in dispute shall be paid as such benefits accrue; provided, that insofar as any such appeal is or may be an appeal from a determination to the effect that the claimant is disqualified under the provisions of R.S. 43:21-5 or any amendments thereof or supplements thereto, benefits pending determination of the appeal shall be withheld only for the period of disqualification as provided for in said section, and notwithstanding such appeal the benefits otherwise provided by this act shall be paid for the period subsequent to such period of disqualification; and provided, also, that if there are two determinations of entitlement, benefits for the period covered by such determinations shall be paid regardless of any appeal which may thereafter be taken, but no employer's account shall be charged with benefits so paid if the decision is finally reversed.

(2) Procedure for making initial determinations in certain cases of concurrent employment, with respect to benefit years commencing on or after January 1, 1953.

Notwithstanding any other provisions of this Title, if an individual shows to the satisfaction of the deputy that there were at least 13 weeks in his base period in each of which he earned wages from two or more employers totaling $30.00 or more but in each of which there was no single employer from whom he earned as much as $100.00, then such individual's claim shall be determined in accordance with the special provisions of this paragraph. In such case, the deputy shall determine the individual's eligibility for benefits, his average weekly wage, weekly benefit rate and maximum total benefits as if all his base year employers were a single employer. Such determination shall apportion the liability for benefit charges thereunder to the individual's several base year employers so that each employer's maximum liability for charges thereunder bears approximately the same relation to the maximum total benefits allowed as the wages earned by the individual from each employer during the base year bears to his total wages earned from all employers during the base year. Such initial determination shall also specify the individual's last date of employment within the base year with respect to each base year employer, and such employers shall be charged for benefits paid under said initial determination in the inverse chronological order of such last dates of employment.

(3) Procedure for making subsequent determinations with respect to benefit years commencing on or after January 1, 1953. The deputy shall make determinations with respect to claims for benefits thereafter in the course of the benefit year in accordance with any initial determination allowing benefits, and under which benefits have not been exhausted, and each notification of a benefit payment shall be a notification of an affirmative subsequent determination. The allowance of benefits by the deputy on any such determination, or the denial of benefits by the deputy on any such determination, shall be appealable in the same manner and under the same limitations as is provided in the case of initial determinations.

(c) Appeals. Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and the determination. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the board of review, unless within 10 days after the date of notification or mailing of such decision, further appeal is initiated pursuant to subsection (c) of this section.

(d) Appeal tribunals. To hear and decide disputed benefit claims, including appeals from determinations with respect to demands for refunds of benefits,

Last additions in text indicated by underline; last deletions by strikeouts.

under section 43:21-16(d) of this chapter (R.S. 43:21-1 et seq.), the director with the approval of the Commissioner of Labor and Industry shall establish one or more impartial appeal tribunals consisting in each case of either a salaried examiner or a body, consisting of examiners under the supervision of a Chief Appeals Examiner all of whom shall be appointed pursuant to the provisions of Title 11 of the Revised Statutes, Civil Service and other applicable statutes.

(e) Board of review. The board of review may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The board of review shall permit such further appeal by any of the parties interested in a decision of an appeal tribunal which is not unanimous and from any determination which has been overruled or modified by any appeal tribunal. The board of review may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceeding so removed to the board of review shall be heard by a quorum thereof in accordance with the requirements of subsection (c) of this section. The board of review shall promptly notify the interested parties of its findings and decision.

(f) Procedure. The manner in which disputed benefit claims, and appeals from determinations with respect to (1) claims for benefits and (2) demands for refunds of benefits under section 43:21-16(d) of this chapter (R.S. 43:21-1 et seq.) shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with rules prescribed by the board of review for determining the rights of the parties, whether or not such rules conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed.

(g) Witness fees. Witnesses subpenaed pursuant to this section shall be allowed fees at a rate fixed by the director. Such fees and all expenses of proceedings involving disputed claims shall be deemed a part of the expense of administering this chapter (R.S. 43:21-1 et seq.).

(h) Court review. Any decision of the board of review shall become final as to any party upon the mailing of a copy thereof to such party or to his attorney, or upon the mailing of a copy thereof to such party at his last-known address. The Division of Unemployment and Disability Insurance and any party to a proceeding before the board of review may secure judicial review of the final decision of the board of review. Any party not joining in the appeal shall be made a defendant; the board of review shall be deemed to be a party to any judicial action involving the review of, or appeal from, any of its decisions, and may be represented in any such judicial action by any qualified attorney who may be a regular salaried employee of the board of review or has been designated by it for that purpose, or, at the board of review's request, by the Attorney General.

(i) Failure to give notice. The failure of any public officer or employee at any time heretofore or hereafter to give notice of determination or decision required in subsections (b), (c) and (e) of this section, as originally passed or amended, shall not relieve any employer's account of any charge by reason of any benefits paid unless and until that employer can show to the satisfaction of the director of the division that the said benefits, in whole or in part, would not have been charged or chargeable to his account had such notice been given. Any determination hereunder by the director shall be subject to court review.

Last additions in text indicated by underline; last deletions by strikeouts.

BC-409S (5-78)

SPANISH-LANGUAGE EXPLANATORY SHEET FOR THE NOTICE OF DETERMINATION (BC-268) - COPY FOR CLAIMANT

NOTIFICACIÓN DE LA DETERMINACIÓN

Se presenta esta hoja para ayudarle a entender lo que se ha determinado en cuanto a su reclamación por beneficios de desempleo.

Se ha determinado:

Después de su protesta, se han vuelto a considerar los datos de la determinación registrada _____, y ha sido ratificada / modificada de modo que:

Ud. es elegible a beneficios desde _____.

Ud. no es elegible desde _____ hasta _____.

No será elegible mientras que no haya cambio en los datos en que se basó esta determinación. Si se cambien los datos, debe reportárselo a la oficina local estatal de desempleo más cerca de su casa.

Ud. es descalificado desde _____ hasta _____.

RAZONAMIENTO DE LA DETERMINACIÓN

No está listo para trabajar.

No está en condiciones de poder trabajar.

No está buscando empleo adecuadamente.

Dejó su empleo sin buena causa claramente relacionada con su trabajo. Será descalificado de beneficios hasta que haya ganado en un empleo por lo menos cuatro (4) veces el monto semanal de beneficios.

Fue despedido por mala conducta en conección con su trabajo.

Rehusó aceptar empleo idóneo cuando se le ofreció.

No se presentó como requerido.

Recibió salarios en vez de notificación de separación.

No está lista y en condiciones de poder trabajar a causa del embarazo.

Empleado -- tiempo completo

Empleado -- salarios

Queda en efecto la descalificación basada en su abandono del trabajo.

Período de menos de siete (7) días

Otro: _____

Fecha entregada: Fecha enviada por correo:

SU DERECHO A APELAR: Hay que escribir cualquiera apelación de esta determinación. Tal apelación escrita debe ser recibida o debe llevar matasellos dentro de siete (7) días de la entrega de la determinación o dentro de diez (10) días de ser enviada por correo.

COPY FOR CLAIMANT

(R-5-78) BC-268

NOTICE OF DETERMINATION

N.J. DIV. OF UNEMPLOYMENT AND DISABILITY INSURANCE

SOCIAL SECURITY ACCOUNT NO.

NAME OF CLAIMANT

I.D. NO. | FIRST DAY OF BENEFIT YEAR

- ☐ It is DETERMINED; ☐ It is REDETERMINED that the Determination dated _____ is AFFIRMED / MODIFIED as follo
- ☐ YOU ARE ELIGIBLE FOR BENEFITS FROM _____
- ☐ YOU ARE INELIGIBLE FROM _____ THROUGH _____
  - ☐ You will continue to be ineligible as long as there is no change in the facts upon which this determination is based. If the facts change, you should apply to the office of the New Jersey State Employment Service nearest your home for reassertion of your claim.
- ☐ YOU ARE DISQUALIFIED FROM _____ THROUGH _____
- ☐ YOU ARE INELIGIBLE FROM _____ through the end of the 4th week immediately following the b of your child.

REASON FOR DETERMINATION		BASIS FOR THE DETERMINATION
01	☐ Unavailable for work	
02	☐ Unable to work	
03	☐ Not actively seeking work	
04	☐ You left your work voluntarily without good cause ATTRIBUTABLE TO SUCH WORK. (You will continue to be disqualified for benefits until you have earned in employment four times your weekly benefit rate.)	
05	☐ Discharge for misconduct connected with your work (See reverse side)	
06	☐ Failure, without good cause, to accept or apply for suitable work	
07	☐ Failure to meet reporting requirements	
08	☐ Remuneration in lieu of notice	
09	☐ Pregnancy - Unable/Unavailable	
10	☐ Employed - full time	
11	☐ Employed - earnings	
12	☐ Voluntary quit disqualification still in effect	
	☐ Less than 7 days	
13	☐ Other:	

SUPPLIER

DETERMINED BY

REDETERMINED BY

DATE DELIVERED | DATE MAILED

RIGHT OF APPEAL Any appeal from this determination must be in writing and must be received or postmarked within seven (7) days after date delivered or within ten (10) days after date mailed.

READ IMPORTANT NOTICES ON OTHER SIDE

A-20

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1982

RECEIVED
JUL 26 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 82 5112

ZOILA ALFONSO,

Appellant,

vs.

BOARD OF REVIEW,
DEPARTMENT OF LABOR AND INDUSTRY,
STATE OF NEW JERSEY,

Appellee.

MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS

Zoila Alfonso hereby respectfully moves this Court for leave to proceed in forma pauperis, in the above captioned matter, pursuant to Rule 46.1. Appellant relies upon the reasons stated in the attached affidavit.

BERNARD K. FREAMON,
Seton Hall Law School
1095 Raymond Blvd.
Newark, New Jersey 07102
Counsel of Record

Jose E. Pardo II,
41 64th Street
West New York, New Jersey

Harris David,
Acting Director
Essex-Newark Legal Services
18 Rector Street
Newark, New Jersey 07102
Counsel for Appellant

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1982
Docket No.

ZOILA ALFONSO,

Appellant,

vs.

BOARD OF REVIEW,
DEPARTMENT OF LABOR AND INDUSTRY,
STATE OF NEW JERSEY,

Appellee.

AFFIDAVIT IN SUPPORT OF MOTION TO
PROCEED ON APPEAL IN FORMA PAUPERIS

I, ZOILA ALFONSO, being first duly sworn, depose and say that I am the Appellant in the above entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs, or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore; that I believe I am entitled to redress and that the issues which I desire to present on appeal are the following: whether my procedural due process rights under the Fourteenth Amendment of the Federal Constitution have been violated by the State of New Jersey and whether the manner of administration in the New Jersey Department of Labor, as a program receiving federal financial assistance, contravenes 42 U.S.C. §2000d and regulations thereunder.

1. I am an unemployed sixty-eight year old widow residing alone at 104 Jefferson Street, Newark, New Jersey where my monthly rent is Two Hundred and Fifty-five ($255.00) Dollars.

2. My livelihood is gained from monies received from Social Security. I receive Two Hundred and Eighty-five ($285.00) Dollars a month from my account together with a widow's supplement of Fifty-eight Dollars and Fifty-four ($58.54) Cents, which I have been receiving since December of 1981.

3. I have no other income. I own no real estate, automobile stocks, securities or any other things of value.

4. There is no one dependent upon me for support.

5. I understand that a false statement or answer to any questions in this affidavit will subject me to penalties of perjury. This affidavit has been translated from English into Spanish to me.

Zoila Alfonso

ZOILA ALFONSO

Sworn to and subscribed before
me this 22 day of JULY , 1982.

JOSE E. PARDO, II, ESQ.
An Attorney-At-Law of The State of N.J.

NO. 82-5112

Office - Supreme Court, U.S.
FILED
AUG 23 1982
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ZOILA ALFONSO,

Appellant,

vs.

BOARD OF REVIEW, DEPARTMENT OF LABOR AND INDUSTRY, STATE OF NEW JERSEY,

Appellee.

On Appeal from the Supreme Court of New Jersey

MOTION OF APPELLEE BOARD OF REVIEW, DEPARTMENT OF LABOR AND INDUSTRY, STATE OF NEW JERSEY TO DISMISS OR TO AFFIRM

IRWIN I. KIMMELMAN,
Attorney General of New Jersey,
Attorney for Appellee, Board of Review, Department of Labor and Industry, State of New Jersey,
Richard J. Hughes Justice Complex
CN 112,
Trenton, New Jersey 08625.
(609) 292-4772

DEBORAH T. PORITZ,
Deputy Attorney General,
Of Counsel.

MICHAEL S. BOKAR,
Deputy Attorney General,
On the Motion.

Adams Press Corp., 10 Park Place, Newark, New Jersey 07102—(201) 623-9611

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	ii
COUNTER-STATEMENT OF THE CASE	2
ARGUMENT—The constitutional question presented by appellant is not a substantial one warranting plenary review by this Court, because the same due process contention has been rejected in every reported federal and state decision that has had occasion to address it and because the procedural deficiency asserted here at most represented an isolated departure from prescribed administrative practice in New Jersey	4
CONCLUSION	8

PAGE

Table of Authorities

Cases Cited

Carmona v. Sheffield, 475 F.2d 738 (9th Cir. 1973) 6, 7

DaLomba v. Director of Division Employment Security, 369 Mass. 92, 337 N.E.2d 687 (Mass. 1975) 6

Frontera v. Sindell, 522 F.2d 1215 (6th Cir. 1974) .. 6

Guerrero v. Carleson, 109 Cal. Rptr. 201, 512 P.2d 833 (Cal. 1973) 6

Hernandez v. Department of Labor, 83 Ill. 2d 512, 416 N.E.2d 263 (Ill. 1981) 6

Kuri v. Edelman, 491 F.2d 684 (7th Cir. 1974) 6

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950) 5

Nuez v. Diaz, 421 N.Y.S.2d 770 (Sup. Ct. 1979) 6

Tahan v. Hodgson, 662 F.2d 862 (D.C.Cir. 1981) 6

United States Constitution Cited

Fourteenth Amendment 2, 5

Statutes Cited

Section 601 of the 1964 Civil Rights Act, 42 U.S.C. Sec. 2000d 2

28 U.S.C.:

Sec. 1257(2) 4, 5, 7

PAGE

Rules Cited

Rule 16.1(b) 1
Rule 16.1(d) 1

NO. 82-5112

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ZOILA ALFONSO,

Appellant,

vs.

BOARD OF REVIEW, DEPARTMENT OF LABOR AND INDUSTRY, STATE OF NEW JERSEY,

Appellee.

On Appeal from the Supreme Court of New Jersey

MOTION OF APPELLEE BOARD OF REVIEW, DEPARTMENT OF LABOR AND INDUSTRY, STATE OF NEW JERSEY TO DISMISS OR TO AFFIRM

Pursuant to Rule 16.1(b) and (d), the Attorney General of the State of New Jersey, on behalf of the appellee, moves to dismiss the appeal or to affirm the judgment of the Supreme Court of New Jersey on the ground that the due process question presented is so insubstantial as to obviate the need for further review.

Counter-Statement of the Case

This case commenced with the filing by appellant of a claim for unemployment insurance benefits in a claims office in the City of Newark, New Jersey (Aa1).* Eighteen days after the filing of her claim, she returned to the claims office and was interviewed by an examiner (Aa2 n.1). Following the interview that day, a Notice of Determination was personally handed to appellant at the claims office holding her ineligible for benefits (Aa2 n.1; Aa39). The Notice, written in English, advised appellant, who did not read or write that language, that any appeal from the determination must be filed within seven days (Aa39). Ten days later she secured a translation of the Notice from a community organization, which also assisted her in filing an appeal (Aa2-Aa3). Following the dismissal of the appeal as untimely by the administrative agency (Aa37, Aa38), appellant appealed to the New Jersey courts, contending that the failure to give her notice of the seven-day time limit for administrative appeals in her native language, Spanish, violated the due process clause of the Fourteenth Amendment as well as Section 601 of the 1964 Civil Rights Act, 42 U.S.C. Sec. 2000d.

In a decision dated April 26, 1982, the New Jersey Supreme Court, with two Justices dissenting, rejected both arguments (Aa1).** Respecting the due process question,

---

* Aa is used to refer to the appendix to appellant's Jurisdictional Statement.

** The statutory contention under the Civil Rights Act is neither discussed nor argued in appellant's Jurisdictional Statement, which states (at p. 10) that "[t]he issue presented by this appeal" is the procedural due process question. Since the statutory issue is thus not presented on the appeal, it will not be adverted to further here.

the court acknowledged "the difficulties that non-English-speaking people encounter in our society" and agreed that the use of bilingual notices in instances such as this would be justified by "administrative and humanitarian considerations." (Aa8). It noted in the latter regard that New Jersey has in fact prepared a Spanish translation of the Notice of Determination for use in unemployment cases (Aa9, Aa44), though the court was unable to make a finding on the record before it that this document had been furnished to appellant (Aa9).* At any rate the court, citing various state and lower federal court decisions that have had occasion to address the constitutional issue, held that the furnishing of notices and decisions in unemployment cases in a language other than English is not mandated by due process. The court thus aligned this State with the view expressed in the cited federal and state decisions that "although bilingual or multilingual notices may in some instances be desirable, their use is not constitutionally required." (Aa9-Aa10). It stated in this regard, in language reminiscent of that in several of the other decisions that have addressed this issue:

> The decision to provide translation, encompassing as it does the determination of when a translation should be provided, and to whom, and in what language is one that is best left to those branches of government that can better assess the changing needs and demands of both the non-English speaking popu-

---

*The court also observed that it was "not unreasonable" to conclude from certain notations on the Notice of Determination and in the claims office's notes of its interview with appellant that an interpreter assisted her at the interview and explained the time limitations to her. It found it unnecessary to resolve this factual issue, however, in view of its holding that Spanish-language assistance in these cases is not constitutionally required. (Aa2).

lation and the government agencies that provide the translation.

Appellant filed a Notice of Appeal with this Court pursuant to 28 U.S.C. Sec. 1257(2) on July 26, 1982 (Aa41).

ARGUMENT

The constitutional question presented by appellant is not a substantial one warranting plenary review by this Court, because the same due process contention has been rejected in every reported federal and state decision that has had occasion to address it and because the procedural deficiency asserted here at most represented an isolated departure from prescribed administrative practice in New Jersey.

That the due process issue proffered by appellant is not a substantial constitutional question warranting consideration by the Court is evident from two circumstances present in this case. First, as discussed in the New Jersey Supreme Court's opinion below, the administrative procedure in effect since 1978 mandates the furnishing of a Spanish translation of the Notice of Determination—which contains notice of the time limits for appeals—to unemployment insurance claimants who are literate only in that language. Because of the huge volume of claims processed in the Newark office where appellant filed her claim, the New Jersey Department of Labor could not affirmatively prove that this Spanish-language document was in fact given to appellant, and the New Jersey Supreme Court made no finding on this point. Similarly, the practice in New Jersey claims offices serving a substantial Hispanic population has for many years been to

insure that an interpreter is available to assist Hispanics who cannot read or understand English. The New Jersey Supreme Court alluded to documentary evidence indicating that an interpreter assisted appellant at her claim interview and explained the appellate time limitations; however, the court declined in the absence of definitive proof to resolve this factual issue.

Despite the New Jersey Supreme Court's inability on the present record to make a definitive finding that appellant had in fact received the Spanish translation of the Notice of Determination as required by the state administrative policy, the crucial point is that that procedure did and does require such a written translation to be furnished to Hispanic claimants, and that any departure from this practice that may have occurred here represented an isolated and inadvertent deviation from the prescribed policy. Hence, if this Court were to grant review in this case, a holding in appellant's favor on the constitutional issue would have minimal, if any, impact on New Jersey unemployment insurance claimants as a class. This fact, together with the uncertainty as to whether a deviation from the prescribed policy in fact occurred here at all, compels the conclusion that the constitutional issue tendered is not a "substantial" one for purposes of the Court's jurisdiction under Sec. 1257(2).

Nor is this procedural due process question substantial in terms of its merits. The proposition that government is required by the Fourteenth Amendment in general, or the Court's decision in *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) in particular, to provide decisions, notices and other documents in the native language of non-English-speaking persons, whether in unemployment insurance cases or in other instances of government interaction with its citizens, has been rejected by virtually every federal and state court that has con-

sidered the issue. *E.g. Carmona* v. *Sheffield*, 475 F.2d 738 (9th Cir. 1973) (unemployment insurance notices); *Kuri* v. *Edelman*, 491 F.2d 684(7th Cir. 1974) (welfare suspension notice); *Frontera* v. *Sindell*, 522 F.2d 1215 (6th Cir. 1974) (civil service examination); *DaLomba* v. *Director of Division Employment Security*, 369 Mass. 92, 337 N.E.2d 687 (Mass. 1975) (unemployment insurance determination and notice of right of appeal); *Hernandez* v. *Department of Labor*, 83 Ill. 2d 512, 416 N.E.2d 263 (Ill. 1981) (same); *Guerrero* v. *Carleson*, 109 Cal. Rptr. 201, 512 P.2d 833 (Cal. 1973) (welfare notice); *Nuez* v. *Diaz*, 421 N.Y.S.2d 770 (Sup. Ct. 1979) (summons with notice of object of action). *Cf. Tahan* v. *Hodgson*, 662 F.2d 862 (D.C.Cir. 1981) (complaint served in foreign country in language of that nation).

In its seminal opinion in *Guerrero*, the Supreme Court of California explained why Spanish-language notices or translations need not be given to Spanish-speaking claimants in order to satisfy the familiar due process notice standard pronounced by the Court in *Mullane*. First, said the court, since Hispanics, like non-English-speaking members of other ethnic groups, must frequently interact and communicate with English-speaking people in the public and private sectors—be it a landlord, grocer, employer or motor vehicle agency—it may reasonably be assumed that they "experience strong and repeated incentives either to learn the English language or to develop a reliance on bilingual persons who can translate for them when necessary." 512 P.2d at 836. Second, a claimant, as illustrated by the assistance obtained by the present appellant, normally would have access to a variety of private or public sources to assist him in communicating with claims office personnel or translating claim notices. *Ibid.* Third, it may be assumed that a claimant, having applied for benefits so important to him and, perhaps, his family, will act prompt-

ly to secure a translation of a formal document given him by the claims office. *Ibid.*

In addition to these reasons, the *Guerrero* court took note of the broad implications of a constitutional ruling in favor of claimants. Such a due process holding, it pointed out, would presumably apply not only to Hispanics but to all claimants known by the agency to be literate only in some other language. *Id.* at 837-838. The rationale of such a holding, the court added, would also encompass all other forms of interaction between non-English-speaking citizens and government in which significant rights, benefits or duties are implicated—an election, for example, or a tax notice. *Id.* at 838. Quoting the Ninth Circuit's decision in *Carmona* v. *Sheffield, supra,* the court observed that such a ruling, insofar as it required states and the federal government "to provide forms and to conduct its affairs and proceedings in whatever language is spoken and understood by any person or group affected thereby," could virtually cause government to "grind to a halt." *Ibid.*

Because the failure of the New Jersey claims office to provide appellant with a Spanish translation of the Notice of Determination—assuming this occurred at all—represented a departure from prescribed state policy and procedure, and because federal and state courts have almost unanimously rejected the notion that due process requires government to furnish notices to Spanish-speaking individuals in their native language, the constitutional claim proffered here cannot be deemed a substantial one warranting review under Sec. 1257(2).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the present appeal should be dismissed for want of a substantial federal constitutional question. Alternatively, the judgment of the Supreme Court of New Jersey should be summarily affirmed.

Respectfully submitted,

IRWIN I. KIMMELMAN,
Attorney General of New Jersey,
Attorney for Appellee, Board of Review, Department of Labor and Industry, State of New Jersey,

By: MICHAEL S. BOKAR,
Deputy Attorney General.

DEBORAH T. PORITZ,
Deputy Attorney General,
Of Counsel.

MICHAEL S. BOKAR,
Deputy Attorney General,
On the Motion.

RECEIVED
SEP 21 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

DISTRIBUTED
SEP 21 '82

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1982
No. 82-5112

ZOILA ALFONSO,

Appellant,

vs.

BOARD OF REVIEW,
DEPARTMENT OF LABOR AND INDUSTRY,
STATE OF NEW JERSEY,

Appellee.

ON APPEAL FROM
THE SUPREME COURT OF NEW JERSEY

REPLY BRIEF

Counsel For Appellant:

BERNARD K. FREAMON, ESQ.
SETON HALL LAW SCHOOL
ESSEX-NEWARK LEGAL SERVICES
1095 Raymond Boulevard
Newark, New Jersey 07102
(201) 642-8701

JOSE E. PARDO, II, ESQ.
41 64th Street
West New York, New Jersey 07093
(201) 868-4334

HARRIS DAVID, ACTING EXECUTIVE DIRECTOR
ESSEX-NEWARK LEGAL SERVICES
18 Rector Street
Newark, New Jersey 07102
(201) 624-4500

10

TABLE OF CONTENTS

TABLE OF CASES ii

ARGUMENT 1

CONCLUSION 3

TABLE OF CASES

	Page
Adickes v. Kress & Co., 398 U.S. 144, 157-158 N.16 (1970)	2
Clark v. Pennsylvania, 128 U.S. 395, 397 (1888)	2
Hooey v. Wilson, 9 Wall 501 (1870)	2
Russell v. Southard, 53 U.S. 139, 158-9 (1851)	2

ARGUMENT

APPELLEE'S CONTENTION THAT THE QUESTION RAISED IN THE APPEAL IS INSUBSTANTIAL MUST FALL BECAUSE IT IS FOUNDED UPON NOTHING MORE THAN COUNSEL'S UNSWORN FACTUAL ASSERTIONS.

Appellee, in his motion to dismiss or affirm this appeal, states at pp. 45:

> "First, as discussed in New Jersey Supreme Court's opinion below, the administrative procedure in effect since 1978 mandates the furnishing of a Spanish translation of the Notice of Determination-which contains notice of the time limits for appeals-to unemployment insurance claimants who are literate only in that language. Because of the huge volume of claims processed in the Newark office where appellant filed her claim, the New Jersey Department of Labor could not affirmatively prove that this Spanish-language document was in fact given to appellant, and the New Jersey Supreme Court made no finding on this point. Similarly, the practice in New Jersey claims offices serving a substantial Hispanic population has for many years been to insure that an interpreter is available to assist Hispanics who cannot read or understand English. The New Jersey Supreme Court alluded to documentary evidence indicating that an interpreter assisted appellant at her claim interview and explained the appellate time limitation; however, the court declined in the absence of definitive proof to resolve this factual issue.
>
> Despite the New Jersey Supreme Court's inability on the present record to make a definitive finding that appellant had in fact received the Spanish translation of the Notice of Determination as required by the state administrative policy, the crucial point is that that procedure did and does require such a written translation to be furnished to Hispanic claimants, and that any departure from this practice that may have occurred here represented an isolated and inadvertent deviation from the prescribed policy."

The principle that an appellate court must decide a case solely on the record before it is incontrovertible. Russell v. Southard, 53 U.S. 139, 158-9 (1851); Hooey v. Wilson, 9 Wall 501 (1870); Clark v. Pennsylvania, 128 U.S. 395, 397 (1888); Adickes v. Kress & Co., 398 U.S. 144, 157-158 N.16 (1970). Appellee's argument ignores this tenet by relying upon numerous unsupported assertions of fact that have never been presented before or found to exist by any tribunal which has heard this case.

The record is devoid of any evidence relating to the practice of the New Jersey Department of Labor when dealing with non-English speaking claimants. This is made obvious by the absence of any reference to the record in the above quoted language. Furtermore, the fact that no hearing was ever given to the Appellant, that being the relief which Appellant has sought from the Courts below, amply demonstrates that no testimony has ever been taken in this case.

Appellee's argument that the question presented is insubstantial because what "...may have occurred here represented an isolated and inadvertant deviation from prescribed policy..." cannot stand since it is founded upon nothing more than counsel's unsworn assertions.

CONCLUSION

For the foregoing reasons it is respectfully requested that Appellee's motion to dismiss or affirm be denied.

Respectfully submitted,

BERNARD K. FREAMON, ESQ.
SETON HALL LAW SCHOOL
ESSEX-NEWARK LEGAL SERVICES
1095 Raymond Boulevard
Newark, New Jersey 07102
(201) 642-8701

JOSE E. PARDO, II, ESQ.
41 64th Street
West New York, New Jersey 07093
(201) 868-4334

HARRIS DAVID, ESQ.
ACTING EXECUTIVE DIRECTOR
ESSEX-NEWARK LEGAL SERVICES
18 Rector Street
Newark, New Jersey 07102
(201) 624-4500

DATED: September 17, 1982

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1982
No. 82-5112

ZOILA ALFONSO,

Appellant,

vs.

BOARD OF REVIEW,
DEPARTMENT OF LABOR AND INDUSTRY,
STATE OF NEW JERSEY,

Appellee.

PROOF OF SERVICE

I certify that on September 20, 1982 one copy of the Repy Brief was mailed to Irwin Kimmelman, Attorney General of New Jersey, attention Michael Bokar, Deputy Attorney General, Richard J. Hughes Justice Complex, Trenton, New Jersey 08625 by ordinary mail.

DATED: September 20, 1982.

BERNARD K. FREAMON, ESQ.
Counsel of Record